No. 1003

**Joint Appendix**

FILED
MAY 14 1958
JOHN T. FEY, Clerk

IN THE

# United States Court of Appeals

## Third Circuit

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**No. 11,862**

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**Natural Gas Pipeline Company of America,**
*Petitioner,*

*vs.*

**Federal Power Commission,**
*Respondent.*

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**On Petition to Review Orders of the Federal Power Commission.**

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RECEIVED & FILED

SEP 24 1956

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R. R. DONNELLEY & SONS COMPANY, CHICAGO

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Chronological Statement of Relevant Docket Entries Below in Compliance with This Court's Rule 24(2)(e)

| Date | Description | Reference[1] |
|---|---|---|
| 10/28/54 | Gas purchase contract, dated December 1, 1946, between Natural Gas Pipeline Company of America and Harrington & Marsh, designated FPC Gas Rate Schedule No. 2, with Supplements Nos. 1, 2 and 3 thereto, filed with the Commission. | 157a; Tr. 6:1006 |
| 12/ 6/54 | Supplement No. 4 to Gas Rate Schedule No. 2 of Dorchester Corporation filed with the FPC. | 217a |
| 12/29/54 | Order of FPC in Docket No. G-2505 suspending Supplement No. 4 until March 1, 1955. | 237a |
| 1/26/55 | Motion by Dorchester to make suspended rate effective on March 1, 1955. | 239a |
| 1/27/55 | Telegram from Natural to FPC requesting that Dorchester be required to furnish bond. | 242a |
| 2/26/55 | Supplement to motion to make suspended rate effective filed by Dorchester. | Tr. 7:1164 |
| 4/ 7/55 | Order of FPC making Supplement No. 4 effective as of March 1, 1955, upon filing of bond of $41,000. | 243a |

[1]Reference is to pages of joint appendix except for documents not printed therein, for which reference is made to volume and page of the transcript of record certified to this Court.

| Date | Description | Reference |
|---|---|---|
| 4/13/55 | Telegram from Natural to Secretary of FPC requesting amendment of order of April 7, 1955, to require bond of not less than $900,000. | 248a |
| 4/15/55 | Letter to FPC from Dorchester enclosing executed bond pursuant to order of April 15, 1955. | 255a |
| 4/19/55 | Telegram from Dorchester to Secretary of FPC opposing amendment of order of April 7, 1955. | 249a |
| 4/21/55 | Petition by Natural to FPC to reconsider order of April 7, 1955. | 250a |
| 5/4/55 | Report of Dorchester showing additional revenues resulting from increased rate. | Tr. 8:1243 |
| 5/12/55 | Report of Dorchester showing additional revenues resulting from increased rate. | Tr. 8:1244 |
| 5/20/55 | Order of FPC fixing date of hearing upon Natural's petition for reconsideration. | 262a |
| 5/26/55 | Motion of Dorchester to reconsider and modify order of May 20, 1955. | Tr. 7:1194 |
| 6/7/55 | Petition of Natural for leave to intervene and answer to motion of Dorchester to reconsider and modify order of May 20, 1955. | Tr. 7:1205 |
| 6/20/55 | Order denying Dorchester's motion to reconsider and modify order of May 20, 1955. | Tr. 7:1209 |

| Date | Description | Reference |
|---|---|---|
| 7/ 7/55 | Designation of Presiding Examiner to preside at hearing. | Tr. 8:1251 |
| 7/ 8/55 | Order denying Natural's petition for leave to intervene. | Tr. 8:1250 |
| 7/11/55 | Report of Dorchester showing additional revenues resulting from increased rate. | Tr. 8:1248 |
| 7/14/55 | Report of Dorchester showing additional revenues resulting from increased rate. | Tr. 8:1249 |
| 7/18/55 | Report of Presiding Examiner to Commission of motion for omission of intermediate decision procedure. | Tr. 8:1252 |
| 7/27/55 | Order denying motion for omission of intermediate decision procedure. | Tr. 8:1255 |
| 8/26/55 | Report of Dorchester showing additional revenues resulting from increased rate. | Tr. 8:1256 |
| 9/14/55 | Presiding Examiner's decision upon petition for reconsideration of bond order. | 266a |
| 9/14/55 | Presiding Examiner's certification of the record accompanying initial decision. | Tr. 8:1257 |
| 9/15/55 | Report of Dorchester showing additional revenues resulting from increased rate. | Tr. 8:1305 |
| 9/16/55 | Letter from Dorchester requesting an immediate hearing to determine lawfulness of ten cent rate filed in Dorchester's Supplement No. 4 to FPC Gas Rate Schedule No. 2. | Tr. 8:1306 |

| Date | Description | Reference |
|---|---|---|
| 9/28/55 | Order fixing date of hearing regarding Dorchester's Supplement No. 4 to FPC Gas Rate Schedule No. 2. | 302a |
| 10/ 3/55 | Petition of Natural Gas Pipeline Company of America for leave to intervene. | 303a |
| 10/ 4/55 | Exceptions of Dorchester to the decision of the Presiding Examiner and brief in support of exceptions. | Tr. 8:1313 |
| 10/ 5/55 | Designation of Presiding Examiner to preside at hearing. | Tr. 8:1381 |
| 10/11/55 | Notice of intervention of Illinois Commerce Commission. | 307a |
| 10/11/55 | Petition of City of Chicago to intervene. | 308a |
| 10/12/55 | Order permitting intervention by Natural Gas Pipeline Company of America. | 312a |
| 10/14/55 | Petition of Oklahoma Corporation Commission for leave to intervene. | Tr. 8:1390 |
| 10/17/55 | Request of Dorchester for oral argument on exceptions to Presiding Examiner's decision. | Tr. 8:1354 |
| 10/24/55 | Report of Dorchester showing additional revenues resulting from increased rate. | Tr. 8:1398 |
| 11/ 7/55 | Order permitting intervention by Oklahoma Corporation Commission. | Tr. 8:1399 |
| 11/ 7/55 | Order permitting intervention by City of Chicago and Illinois Commerce Commission. | 313a |
| 11/14/55 | Order of the Commission reversing initial decision of Presiding Examiner. | 315a |

| Date | Description | Reference |
|---|---|---|
| 11/15/55 | Letter from Dorchester advising that in view of Commission's order, issued November 14, 1955, the filing of the request for a ten cent rate by Dorchester, or Supplement No. 4 to FPC Gas Rate Schedule No. 2, is being withdrawn. | 324a |
| 11/17/55 | Report of the Presiding Examiner to the Commission of request for waiver of intermediate decision procedure. | 326a |
| 11/18/55 | Report of Dorchester showing additional revenues resulting from increased rate. | Tr. 8:1414 |
| 11/21/55 | Letter from Natural replying to Dorchester's letter, filed November 15, 1955, stating that such Dorchester letter is of no force and effect. | 329a |
| 12/ 7/55 | Petition of Natural for rehearing of Commission's order reversing initial decision of Presiding Examiner. | 330a |
| 12/15/55 | Report of Dorchester showing amount received from Natural for gas supplied at 9.8262¢ rate. | Tr. 8:1425 |
| 12/19/55 | Supplementary report of Dorchester showing that Natural continued its payments at the 10¢ rate. | Tr. 8:1426 |
| 12/23/55 | Order omitting intermediate decision procedure. | Tr. 8:1427 |
| 12/27/55 | Filing of Dorchester setting forth rate of 9.8262¢ per Mcf. | 336a |
| 12/28/55 | Presiding Examiner's certification of the record. | Tr. 8:1432 |

| Date | Description | Reference |
|---|---|---|
| 1/ 3/56 | Letter from Natural to Secretary of FPC protesting Dorchester's filing of December 27, 1955. | 358a |
| 1/ 5/56 | Order denying Natural's petition for rehearing and request for oral argument. | 339a |
| 1/ 5/56 | Order dismissing proceedings, dismissing Supplement No. 4 to Dorchester's Gas Rate Schedule No. 2 and reinstating Supplement No. 3 or the 9.8262¢ rate. | 340a |
| 1/20/56 | Petition of Natural for rehearing of order of January 5, 1956, dismissing proceedings. | 344a |
| 1/27/56 | Report of Dorchester of credit memorandum issued to Natural reflecting difference between deliveries at 9.8262¢ and 10¢ rates. | 351a |
| 2/ 3/56 | Notice from the Secretary accepting Dorchester's rate filing of December 27, 1955, and allowing said filing to become effective January 27, 1956. | 354a |
| 2/ 8/56 | Telegram from Natural protesting notice from the Secretary accepting Dorchester's rate filing of December 27, 1955. | 355a |
| 2/ 9/56 | Order issued denying application of Natural for rehearing of Commission's order of January 5, 1956. | 353a |
| 2/24/56 | Order denying Natural's application for rehearing of the notice from the Secretary. | 357a |

[1]

BEFORE THE

# Federal Power Commission

| | |
|---|---|
| In the Matter of: DORCHESTER CORPORATION | Docket No. G-6505 |

* * *

[2]

PROCEEDINGS

* * *

[22]

MR. GENE M. WOODFIN, *Counsel for Dorchester Corporation*. Might I add one further thing, to make it entirely consistent, your Honor, with the law and with the order itself. I think the Commission could certainly say in issuing that order so as to give Dorchester the same treatment it has given every other independent producer, that "We will carry that along. We are saying we are not going to happen to your rate in the future, but at least until this thing is determined, you are going to have that rate, and it is going to continue."

Certainly the Commission knows it can't come back and set a retroactive rate. Certainly this would be the only time and the only seller of gas in the Guymon-Hugoton field that hasn't been allowed and didn't have the Oklahoma minimum price rate. I don't believe they intended to accord that discriminatory treatment to Dorchester.

PRESIDING EXAMINER: The Staff has indicated it does not intend to offer any evidence. I would like to ask, Mr. Walsh, just for my own enlightenment here: To your knowledge are there other situations now before the Federal Power Commission in which a producer made a filing as of October 1, 1954, under Order 174-A in which the effective rate as claimed in that filing was based on the Oklahoma state minimum price law, and if so, what action has the Commission taken with regard

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to such filing since the date of the Supreme Court decision holding the Oklahoma law to be invalid?

Do you know?

MR. FRANCIS J. WALSH, *Counsel for the Staff of the Federal Power Commission:* I don't know as a fact, Mr. Examiner, but there must be rates before the Commission which include this Oklahoma minimum price. I know that to be a fact. But the Commission, since the decision in the Panoma Corporation—incidentally, so the record will be clear, rather than these clause numbers, that citation now is 349 U.S. 54, so we can get rid of these clause numbers.

But the Commission has not taken any action relative to them, to my knowledge. This is the first case that has arisen that places before the Commission for the first time the effect of the Oklahoma order.

* * *

[61]

ALBERT S. McKENZIE

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McGOWAN:

Q. Will you please state your name and address, Mr. McKenzie?

A. Albert S. McKenzie, 2503 East Wood Avenue, Evanston,

[62]

Illinois.

Q. What is your present position with Natural Gas Pipeline Company of America?

A. Assistant Vice President.

* * *

[74]

Q. Mr. McKenzie, since you began receiving deliveries from Dorchester during the month of July, 1954, what procedure have you followed for making payments for that gas?

A. We have issued a check payable to the First National Bank at Dallas, Texas, Trustee.

Q. In other words, in every month since July 1, 1954, you have made out a check to the First National Bank in Dallas, Texas, Trustee, for the total amount of the gas sold and delivered to you by Dorchester under contract?

A. Under the contract, yes.

PRESIDING EXAMINER: Since what date?

MR. McGOWAN: Since July 1, 1954.

[75]

BY MR. McGOWAN:

Q. Have those payments been made pursuant to directions given to you to do that?

A. They have.

MR. WALSH: Who gave you the directions, Mr. McKenzie?

THE WITNESS: In the first instance, we received a letter just prior to the transfer of the properties from Panoma Corporation stating that the transfer was to be made and stating to whom the payments would be made, after the transfer of the properties.

BY MR. McGOWAN:

Q. Has Dorchester Corporation ever objected to that practice of making the payments in total to the First National Bank in Dallas?

A. They have not.

MR. McGOWAN: That is all.

* * *

[107]

JAMES J. FLANNAGAN

was called as a witness, and after having been duly sworn by the Presiding Examiner, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIN:

Q. Mr. Flannagan, what is your occupation?

A. I am a lawyer.

Q. Are you with the firm, or one of the partners in the firm, of Dunnington, Barthlow, and Miller in New York?

A. I am.

Q. Are you counsel for Dorchester Corporation?

A. The firm is.

Q. Did your firm represent Dorchester Corporation in the acquisition of certain properties from Panoma Corporation and from Nalam Corporation and the related Transactions as of July 1, 1954?

A. It did.

Q. Are you familiar with that transaction yourself,

[108]

Mr. Flannagan?

A. I am.

Q. Did you participate therein and assist in the preparation of the various documents involved in the entire transaction?

A. I did.

* * *

[113]

A. Panoma Corporation was dissolved on July 1, 1954,

[114]

and its assets were distributed to its stockholders. As I remember it, there were five stockholders, and we have generally referred to those five stockholders as Harrington and Marsh, et al., or Harrington, et al.

When Harrington, et al., was in possession of the former assets of Panoma Corporation, including both the gasoline plants and the leasehold properties, they sold to Dorchester Corporation the two gasoline plants and the Oklahoma gathering system, tank cars and certain other related equipment, for $6,500,000, of which $3,500,000 was represented by a purchase money mortgage that went back to Harrington, et al., and of the remainder of the purchase price of $3 million, $2,500,000 was borrowed from the Chase Bank.

By an arrangement between the Chase Bank and Harrington, et al., the latter subordinated their mortgage to that of the Chase Bank. So that Harrington mortgage became in effect a second mortgage on the plant.

As a simultaneous transaction but in time sequence after Dorchester Corporation was the owner of the gasoline plants, it

entered into the processing agreement with Harrington, et al., as the owners of the leasehold properties. Under that processing agreement, Dorchester agreed to gather the gas and process the same and deliver it in accordance, among other things, with the Natural contract.

Q. In that connection, Mr. Flannagan, was there an

[115]

assignment of the natural gas contract in so far as it related to the gathering and processing of the gas at that stage?

A. Yes, there was.

Q. A separate assignment of that portion of the contract?

A. Yes, there was.

Q. And that was agreed to by Natural?

A. That is correct. Natural consented to assignment of that interest by Harrington, et al.

Q. So the gathering and processing was separated from the rest of the contract and that interest was covered by the processing agreement entered into by and between Dorchester and the then owner of the leaseholds, the stockholders Harrington-Marsh et al., is that correct?

A. That is correct.

As part of the consideration for the right which the leasehold owners granted to Dorchester Corporation to process the gas, Dorchester was committed to pay back to Harrington, et al., as the owners of the leasehold an amount equal to 45 percent of the liquid value attributable to their working interest, and also an amount for plant, fuel and shrinkage equivalent to that which Dorchester would get for a similar volume of gas delivered at the outlet side of the plants.

Q. I will ask you, Mr. Flannagan, if that posture is just as if I as the owner of a leasehold entered into a contract for the plant for the gathering and processing of my gas whereby

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I would receive back 45 percent of the liquids. Is that correct?

A. That was the arrangement.

PRESIDING EXAMINER: And that 45 percent provision is in addition to the 6 5/10 million dollar consideration to be paid by Dorchester to Harrington, et al.?

THE WITNESS: The 6 1/2 million dollars might be considered to be the cost for the naked plants, which of course are valueless as plants. But you tie that in with the right to take and process this gas from the leaseholds, and that is what we paid the 45 percent of the liquids for the right to take and process that gas through those plants.

* * *

Q. Let me ask this question. Then at that stage, Dorchester owned the gasoline plants, the gathering lines, and were obligated under the processing agreement to gather

[117]

the gas, process it, and deliver it to Natural under the terms of the contract, is that correct?

A. That's correct.

MR. ROSS: I would like to ask one question. Is all of the gas which is processed, gas which is sold solely to Natural?

THE WITNESS: No. The processing agreement committed us to honor also the Northern Natural contract and the Panhandle contract.

MR. ROSS: However, is all the gas from the so-called purchase leasehold interests gas sold exclusively to Natural Gas Pipeline, or is that in addition to other products?

THE WITNESS: That is only the Oklahoma properties. On the Texas properties, and the gas that goes through the Texas plant, of course that is delivered to Northern Natural.

MR. ROSS: I didn't make my question clear. The leasehold interests to which you refer and to which gas is delivered, is all of the gas delivered from those leaseholds sold to Natural Gas Pipeline or is part of it sold to Northern Natural and other companies?

THE WITNESS: I tried to answer that before. The leasehold interests which were acquired by Dorchester covered properties that were subject to contracts with Natural Gas Pipeline, Northern Natural and Panhandle.

MR. ROSS: Very good.

PRESIDING EXAMINER: So that on Part 1, the box which is

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headed "Nalam Corporation" and under that heading the phrase "Purchased Leasehold Interests for $37 million," in referring to those leasehold interests you are talking about interests which are committed not only to Natural but also to Northern?

THE WITNESS: We are talking about leasehold interests located in three states, Texas, Oklahoma and Kansas. It is only the Oklahoma properties that we are here concerned with by reason of their being under contract to Natural Gas pipeline.

BY MR. WOODFIN:

Q. The Oklahoma properties form in terms of production approximately what percent of the daily production?

A. I shouldn't answer that question. Jack Crichton can correct me. It is my understanding that they represent approximately 70 percent of the gross volume of the properties.

Q. Those are all the properties lying in the Guymon-Hugoton field and the Texas Panhandle field?

A. And the Panhandle?

Q. Mr. Flannagan, at that stage of the proceeding, then, Mr. Harrington, Mr. Marsh, and the other stockholders own the leaseholds. They had parted with title to the gathering systems, to the processing plants, and they had acquired their money for those and they had acquired in parting with their right to process the gas, the 45 percent liquid value payment. Is that correct?

[119]

A. That is correct.

Q. And they at that time owned the leasehold and the 45 percent liquid value payment. Then what happened?

A. At that point, Harrington, et al., sold the properties which you have just described to Nalam Corporation for $37 million, reserving what might be termed a secondary production payment in the amount of $75 million to commence when the properties had produced $38 million plus five percent. There is an extra $450,000 in there, but it is not important.

Q. When the properties have produced $38 million—you mean by that, that when the net interest conveyed and the liquid value payments have equalled $38 million plus five percent, then the reserve production payment of $75 million comes into effect?

A. That is correct.

MR. ROSS: Plus five percent annually unpaid balances. That is what you mean?

MR. WOODFIN: On the declining balance.

BY MR. WOODFIN:

Q. The leasehold interests and the liquid value payment were thus conveyed to Nalam Corporation, but at that juncture a deferred production payment in the amount of $75 million was reserved, et al., is that correct?

A. That is correct.

Q. Then what happened, or simultaneously therewith?

[120]

A. Nalam borrowed $35 million from Metropolitan Life Insurance Company and Mutual Life Insurance Company of New York, and to secure that loan, mortgaged all of the properties which it had received from Harrington, et al.

Q. That mortgage was in the nature of a regular first mortgage lien, was it not, that covered all of the properties which had been acquired?

A. That is correct.

Q. So all of the leasehold interests and the liquid value payment of 45 percent of the proceeds of the liquids are then subject to the prior lien of the Metropolitan Life Insurance Company and the Mutual Insurance Company of New York, is that correct?

A. That is correct.

Q. Subject, however, to the deferred production payment of Mr. Harrington?

A. Well, in a sense, Nalam never had that which was reserved by Harrington, et al., so that I think it is correct to say that everything that Nalam got was made subject to the mortgage.

Q. Everything Nalam got was subject to the mortgage, but out of their bundle of sticks there had already been taken the reserve production payment before it got within the mortgage?

A. That is correct.

[121]

Q. And then Nalam raised $35 million in a mortgage of those properties to the Metropolitan and to Mutual. Then what happened?

A. Nalam then conveyed the properties which it had received from Harrington, et al., to Dorchester Corporation, reserving what might be called the primary production payment in a

face amount of $35 million, plus interest on the declining balances at the rate of 5 percent per annum, payable out of 96½ percent of the production from the properties.

The net effect of that transaction was to permit to flow through and to Dorchester Corporation 3½ percent of the production.

May I say that both in describing the mortgage and this production payment, I have really only been talking about the primary phases of it, because the mortgage was geared so that the lien of shrunk back as indicated on some of these later charts. The percentage of production attributable to the primary production payment that Nalam reserved is in varying amounts as these charges will indicate.

Q. So then Dorchester received the leaseholds and the 45 percent liquid value payment, subject to a reservation of 96 percent of the proceeds thereof until there had been recovered 35 million dollars plus five percent per annum on the declining balance.

MR. ROSS: 96½.

[122]

MR. WOODFIN: 96½.

A. That is correct.

* * *

[127]

Q. Mr. Walsh, I think, is reaching out at the end and saying that that is what you transferred. They transferred, of course, the leasehold interest and the production payment, and in the interim, the various other production payments and the lien and the mortgage were fastened onto the leasehold interests, so when the basic leasehold interests were received by Dorchester, you have got 3½

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percent of the proceeds from the gas and the production payment, until $35 million at five percent is paid out; is that correct?

A. That is correct.

PRESIDING EXAMINER: Is everything this complicated in the production business?

MR. WALSH: That about sums it up: that last question?

* * *

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Q. But when Nalam conveyed the properties to Dorchester, it reserved a production payment or payments which in varying degrees would pay off the certain obligations which it had assumed, assuming that the thing worked out according to schedule. Is that correct?

A. That is correct.

MR. WALSH: Could I cut in and ask one question?

* * *

[142]

Q. So at the end of the transaction, Dorchester owns

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the gasoline plants, subject to the mortgage of the Chase National Bank, and subject to the subordinate mortgage, subordinate to Chase's mortgage, of Harrington, et al, and burdened with the obligation to gather and process the gas under the processing agreement. Is that correct?

A. That is correct.

Q. On the other hand, under the leasehold side, Dorchester acquired the leasehold interest which included at the beginning

only 3.5 percent of the runs attributable to the 45 percent liquid payment which was payable to the owners of the leasehold, and 3.5 percent of the runs from the gas, or the residue gas; and that of course was subject to Harrington, et al's, prior reserve production payment, the lien of the mortgage given to secure the loan from the Metropolitan Life Insurance Company and Mutual Insurance Company of New York in the principal amount of $35 million, and the reservations made in the conveyance from Nalam to Dorchester. Is that correct?

A. That is correct.

Q. So let me for purposes of illustration ask this question. Suppose there was a default in the payments to Harrington or to Chase on the mortgages securing the gas plants, and let us assume that the mortgagee in either instance would exercise their rights under the mortgage; then in that instance Dorchester would lose the gasoline plants and the gathering

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system. Is that correct?

A. That's correct.

* * *

[161]

CROSS-EXAMINATION

BY MR. ROSS:

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[163]

Q. Assuming there is a default in the mortgage to the insurance companies, does the insurance company—do the insurance companies then have a right to the total allocation

[164]

of production to the exclusion of the 3½ percent of Dorchester?

A. Well, I assume when you ask me "default," they then

exercise the full rights they have under the mortgage to the point of receiving or foreclosing the properties—

Q. Yes.

A. On that basis, the lien of the mortgage extends to all of the properties appearing on the chart exclusive of the Harrington production payment, so they would have the right to do that.

Q. That is, of the payments we make under our contract, 100 percent would go to the insurance companies and none would go to Dorchester?

A. As I understand it, 100 percent goes to the trustee as of the moment.

Q. In the event of the exercise by the insurance companies of their rights under the indenture, they would be entitled to the full 100 percent?

A. Dorchester would have difficulty persuading the trustee to make any refunds to it.

MR. ROSS: That is all.

MR. WOODFIN: Who pays for the operation of the properties?

THE WITNESS: Dorchester Corporation.

MR. WOODFIN: And Dorchester operates the leasehold

[165]

properties?

THE WITNESS: That is correct.

BY MR. ROSS:

Q. And their only source of income is the amounts shown on Part 4 or the allocations shown on Part 4, plus 55 percent of the liquids from the operation of the gasoline plants?

A. Well, in a sense, that is right.

MR. WOODFIN: Do you mean by that the only source of income from this particular property which we are now talking about?

THE WITNESS: Yes, that answer was inaccurate in that sense. I mean Dorchester has a means of operating the properties, whatever income it has derived out of the Harrington deal, plus any other sources.

* * *

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JOHN CRICHTON

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIN:

Q. What is your name?

A. John Crichton.

Q. Mr. Crichton, what is your position with Dorchester Corporation?

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A. President.

Q. Where do you live, Mr. Crichton?

A. Dallas, Texas.

Q. What is your profession?

A. Petroleum Engineer and Geologist.

* * *

[171]

Q. There is an item due from First National Bank, Trustee, $128,634.29. Would you explain that item?

A. Yes. When the gas is sold during, let's say, the month of June, in July invoices are given to the purchasers of that gas

who are required to pay within 10 days from the date of that invoice.

Q. When you say "required to pay," who do they pay?

A. The payment goes to the First National Bank, Trustee.

Q. The money goes from the purchaser into the Trustee?

A. Correct.

Q. You never see or touch the money?

A. That is correct.

Q. All right. Go ahead.

A. As far as the sale of natural gas is concerned, or residue gas.

Q. All right.

A. Now, we are required to pay the royalty owners and the production taxes in the interim, so between the 20th and the 24th of the month succeeding the month in which the gas was produced, we pay the royalty owners and these production

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taxes.

* * *

[173]

MR. WALSH: You pay them before you get paid?

THE WITNESS: Yes, before we get paid, which means that we then certify to the Trustee what these payments have been, and then the Trustee reimburses us for our money.

* * *

[174]

Q. BY MR. WOODFIN: Mr. Crichton, in the amount of gross money that is paid to you by—or paid to the First National Bank, Trustee, by Natural, that is for 100 percent of the residue gas received by it; is that correct?

A. That is correct.

Q. That amount of 100 percent of the gas, how much is represented by proceeds that go to royalty owners?

A. Approximately 20 percent.

Q. Out of the total amount received by the Trustee, you receive 3½ percent of 80 percent, approximately, is that correct?

A. 3½ percent of 80 percent of the—

Q. That is with respect to the Natural sale.

[175]

A. With respect to the residue gas, correct. But to that must be added the liquids.

Q. I understand that. The liquid payment is in there, but the basic point that I want to make without worrying about whether we carry it to five decimal points or six is that the royalty owners are paid, then you arrive at your net proceeds, and you get 3½ percent of the residue gas, and you get 3½ percent of the 45 percent that was paid for the liquids to the leasehold owners?

A. That is correct.

* * *

[176]

MR. ROSS: How much of the $128,634.29 represents the 3½ percent of the 80 percent.

THE WITNESS: On a month-to-month basis. The 3½ percent amounts to about $10,000. So I would estimate only about $10,000.

BY MR. WOODFIN:

Q. That is 3½ percent of the residue from all sales; is that correct?

A. That is correct.

Q. That is 3½ percent of the liquids from all properties?

A. That is correct.

Q. It amounts to about $16,000?

A. A month, yes.

Q. What does it cost to operate the properties a

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month, leasehold properties?

A. The cost of operating the leasehold properties runs about $175,000 a year. It is around $15,000 a month.

Q. So the 3½ percent runs that you receive is not sufficient to pay the cost of operating the leaseholds, is it?

A. Right.

* * *

Q. In other words, you have your income from the products, and to the extent that you have that income, you make up the deficiency in operating income to operate the leaseholds, is that correct?

[178]

A. That is correct. In the figure that I have given you of $175,000, that does not include any general and administrative that should be allocated to direct field expenses.

* * *

[179]

Q. Now, let's assume that Cortez, who owes the money directly to Metropolitan and to Mutual, defaults on that loan and the mortgage under which you are held subject is foreclosed; would that mortgage be foreclosed on the developed

[180]

leasehold and the leasehold equipment?

A. Yes.

Q. Would it be foreclosed on any other item of property shown in fixed assets?

A. No, it would not.

Q. The other items of property shown in fixed assets are those items which you acquired in the purchase of the gasoline plants? Is that correct?

A. Yes.

Q. They are not subject to the mortgage to Metropolitan or to Mutual on the debt which is owed by Cortez? Is that correct?

A. That is correct.

Q. They are subject, however, to the mortgage to the Chase National Bank and to the Reserve Mortgage of Mr. Harrington; is that correct?

A. That is correct.

* * *

[183]

Q. You show an item Accrued Royalties Payable, $191,067.61. Would you explain that item?

A. Yes. That is something that occurs as a result of the way that royalties are paid, and which I have just gone through about the invoicing, the payment of royalties, and the receipt of money.

Q. Do you have to dip into Dorchester's cash to pay the royalties, and then later on, the Trustee receives payment from the purchasing companies, and then you give the Trustee a certificate and are reimbursed for the royalties; is that correct?

A. That is correct.

Q. So in the first instance, you advance the money and then you are repaid by the Trustee; is that correct?

A. That is correct.

PRESIDING EXAMINER: Those are royalties paid on the leasehold interest which was acquired from Nalam?

[184]

THE WITNESS: Yes, sir.

BY MR. WOODFIN:

Q. Those royalties are required by the terms of the oil, gas and mineral leases under which the basic leaseholds are held, or assignments or reservations or granting of overriding royalties, are they not?

A. That is correct.

* * *

[185]

Q. I see that you don't reflect any liability on this balance sheet for any amounts due or payable either as a current liability or as a long-term debt, any amounts that are due or payable under the mortgage securing the loan from the Metropolitan Life Insurance Company and the Mutual of New York in the principal amount of $35 million.

A. That is not a liability of Dorchester Corporation. That is a liability of Cortez. Dorchester Corporation owns these properties subject to the Cortez mortgage.

Q. Subject to the Cortez mortgage?

A. Yes.

Q. But because you are the owner, shall we say, or the one in whose name the gas purchase contract stands, you are in the position of the seller; is that correct?

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A. That is correct.

Q. And for that reason, you have made the various filings for the Federal Power Commission covering the interest in the properties?

A. That is correct.

Q. Even though you only get 3½ percent of the run?

A. That is correct.

Q. And those runs—the proceeds from those runs are not sufficient to pay your cost of operating the properties.

A. That is correct.

* * *

[187]

Q. Assuming that you had a 6¼ cent gas price during the entire period of time, what would be Dorchester's cash position on January 1, 1956?

A. It would be slightly improved.

Q. Why is that?

PRESIDING EXAMINER: It would be slightly improved?

THE WITNESS: Yes, sir.

BY MR. WOODFIN:

Q. Why is that?

A. The reason is that we only get 3½ percent from the sale of the natural gas residue. On the other hand, we pay plant fuel and shrinkage, which amounts to a considerable amount of money. The offsetting of going from 10 cents to 6½ cents as applied first to 3½ percent and then your plant fuel and shrinkage, makes you come out actually with an increase in cash to Dorchester of somewhere around $2000 a month.

MR. ROSS: That is assuming products prices are the same.

BY MR. WOODFIN:

Q. You pay for plant fuel and shrinkage at the contract rate for residue gas; is that correct?

A. That is correct.

Q. So if your price were 6¼ cents, your cost of

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plant fuel and shrinkage would be reduced below—the difference if the price was 10 cents; is that correct?

A. That is correct.

* * *

[189]

Q. Mr. Crichton, if the rate of Dorchester—I say Dorchester as being the flag which carries the banner here—if the rate under the Natural contract is $6\frac{1}{4}$ cents, will there be sufficient funds generated by January 1, 1956 for Cortez to meet the obligations to Metropolitan Life Insurance Company and Mutual?

A. Based on certain assumptions as to deliverability which are taken in light of current conditions and also past production, the amount of money that is generated to meet that payment at $6\frac{1}{4}$ cents for the residue for the Oklahoma gas, would not be sufficient by an estimated $150,000 to $160,000 on January 1, 1956.

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Q. What is the amount of the payment due on that mortgage at that time?

A. The amount of the payment due is accumulative of $1,300,000. $500,000 has been paid already as of July 1, 1955. So, another $800,000 has to be paid on the principal by January 1, 1956.

Q. Now, if we were to assume the same factors, and assuming an effective rate of ten cents from March 1 through the same period, would there be sufficient funds generated so that Cortez could meet that loan payment of $800,000?

A. Based on the same assumptions there would be, yes, sir.

Q. By what amount of money, if you can estimate it?

A. Probably anywhere from twenty-five to fifty thousand dollars.

Q. So, based upon those same assumptions, you would, in effect, squeak by on that payment; is that correct?

* * *

[192]

BY MR. WOODFIN:

Q. You have in your opinion, have you not, taken what you consider to be the most optimistic view of the deliveries of gas and the products prices which you would receive during that period of time in making that estimate?

A. I would say we have taken what we consider a realistic view of what will happen volume-wise since we already have some months' history. And we also have a pretty good knowledge of what our allowables are now.

* * *

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Q. And Natural had agreed and consented to the assignment of the contract?

A. I presume so.

Q. And the transaction was closed on July 1, 1954.

A. That is correct.

MR. WALSH: If you know, was Natural's consent to the

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assignment of the contract as of July 1, 1954, too?

THE WITNESS: They must have; or the transaction would never have been closed.

* * *

[201]

BY MR. WOODFIN:

Q. Mr. Crichton, if the loan of Metropolitan and Mutual is foreclosed, what would be the effect upon Dorchester of its investment in the leasehold property?

A. Dorchester would lose those residual equities which are set up on the balance sheet at approximately $2 million at this time.

Q. Mr. Crichton, at a rate of 10 cents, present rate of 10 cents, from Natural, you state that you will be able—that Cortez would be able to barely meet the January 1, 1956 payment.

Assuming that rate, have you made any calculations as to when, or if ever, Dorchester might recover its investment in the leasehold properties?

* * *

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THE WITNESS: At a 10-cent rate only, Dorchester would probably recover its investment at a great number of years from now.

BY MR. WOODFIN:

Q. In other words, if at all; is that correct?

A. If at all. I believe they would, though.

Q. You believe they would, but it would be a great number of years, you say, something in the nature of 25 or 30?

A. At least 25 or 30 years; yes, sir.

Q. In other words, it would be 25 or 30 years before the $35 million would be paid off?

A. That is correct.

Q. In other words, on this chart which we have designated Part 4, if those lines were to represent time as well as amounts,

the $38 million line would be way down on the page, wouldn't it, Mr. Crichton, or maybe off the bottom of it?

A. That is correct.

* * *

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CROSS-EXAMINATION

BY MR. ROSS:

Q. Referring to the balance sheet, Exhibit No. 12, Mr. Crichton, and referring particularly to the long-term debt of $3,500,000 owed to D. D. Harrington, et al.—the first maturity is 1959; is that correct?

A. That is correct.

Q. Interest is payable on that loan at the rate of five percent per annum?

A. That is correct.

Q. Is interest due and payable on that loan now?

A. Interest has been paid on the D. D. Harrington note up and until March 31; it is now accruing. As of a later balance sheet, it would show as an accrual.

Q. Now, with respect to the $2,600,000, what is the situation with respect to that interest?

A. That interest is shown as accrued interest, and it is shown up under current liabilities as accrued interest.

Q. Do you have any waiver from Mr. Harrington with

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respect to the payment of that interest?

A. Yes, we do.

Q. Is there any consideration for that? That is to say, could he revoke his forebearance if he wishes?

MR. FLANNAGAN: Can I explain that?

PRESIDING EXAMINER: Off the record.

(Discussion off the record.)

PRESIDING EXAMINER: We will go back on the record.

THE WITNESS: For the record, I will state, as to your question, Mr. Ross, I do not feel that I am qualified to answer the details, but Mr. Flannagan, our attorney, is.

MR. ROSS: Thank you.

BY MR. ROSS:

Q. With respect to the item of earned surplus of $208,139.17, I understand that if depreciation and depletion for the three months period ended March 31, 1955 were reflected, that the earned surplus would be approximately $58,000 instead of $208,000; is that correct?

A. That is only an approximation.

Q. Well, I understood you to say that the accrued depreciation and depletion for the three months ended March 31, 1955, would be not less than $150,000; is that right? It might be more?

A. Yes, that is my understanding from preliminary talks with the auditors.

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Q. All right.

A. And it all depends on what the auditors come up with.

Q. Very well. Assuming that to be the case, then as of March 31, 1955, the total capital stock and surplus would be not more than $558,000 in lieu of the $708,000 shown on the balance sheet; is that correct?

A. That is correct.

Q. Has Natural Gas Pipe Line Company of America made demand upon you for the amount of $572,315, being the amount referred to in Note 1 to the balance sheet?

A. That is correct

Q. Natural has made a demand on you for payment of that amount?

A. That is correct.

Q. If the rate, contract rate, is sustained by Natural at 6.2 cents for the period from July 1 to March 1, 1955, this amount will be payable, will it not?

A. That will be a question for the courts to decide, sir.

Q. I see. In the event it does become payable, Dorchester Corporation will then have no capital stock or surplus left; is that correct?

* * *

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Q. Mr. Crichton, I addressed a question to Mr. Flannagan with respect to Part 4 of Exhibit No. 11, and I asked Mr. Flannagan to estimate the number of years it would take for 95 percent of the allocation of production, as shown in that exhibit, to liquidate the $35 million, plus an amount equal to interest at the rate of five percent per annum on unpaid balances.

Is it my understanding that in your answer to a question of Mr. Woodfin's that the period of time would be at least 25 or 30 years, based on a 10-cent rate?

A. That is correct.

* * *

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MR. WOODFIN: I have just one thing I would like to ask him.

Mr. Crichton, of the $572,315.84 which Natural has claimed that it overpaid Dorchester, am I correct when I say that

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Dorchester, from that sum, has received, after payment of the royalty owners which represents approximately 20 percent of the

$572,315.84, 3½ percent of the remainder of the total sum itself.

THE WITNESS: That is correct, sir.

* * *

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CLARENCE H. ROSS

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McGOWAN:

Q. Please state your name and address?

A. Clarence H. Ross, 122 South Michigan Avenue, Chicago.

Q. What is your relationship to Natural Gas Pipeline Company of America?

A. I am a member of the firm of Ross & O'Keefe, who are counsel for Natural Gas Pipeline Company of America.

* * *

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CROSS-EXAMINATION

BY MR. WOODFIN:

* * *

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Q. Mr. Ross, perhaps Mr. McKenzie will have to answer this. Perhaps you are familiar enough with Natural's general records. I will tell you that that is the invoices which

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were taken from Dorchester's files, Natural Gas Pipeline Company of America's invoices, which were attached to and made a part of our original rate filing in this case.

Could you say whether or not they appear to be genuine?

A. Well, I have no familiarity with such matters, and I have never actually seen such a statement until this one was handed to me at this moment. I don't think I am qualified to testify with respect to that.

Q. Well, just assuming, so that we will not have to put you back on the stand, that the authenticity of these documents—which will be proved by either Mr. Crichton or perhaps Mr. McKenzie—that they are authentic documents and represent the invoices of Natural Gas Pipeline Company of America, what is the price shown on that invoice effective—the invoice dated July 31, 1954?

A. Well, I see a price on this invoice of .098262.

Q. Now, there is nothing on that invoice, is there, Mr. Ross, to indicate any other price?

A. I see nothing.

PRESIDING EXAMINER: Well, in order to make it unnecessary to bring another witness in to verify that, I have in my hand the actual FPC Gas Rate Schedule No. 2 to which those invoices are attached, and I will hand that volume to Mr. Ross and ask him to look at the invoice dated July 31, 1954, and confirm that that is the price.

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THE WITNESS: That is correct, on the document which you have handed me, the price is stated at .098262.

BY MR. WOODFIN:

Q. Mr. Ross, you heard Mr. Flannagan testify that these negotiations started in 1953. At some period from 1953, be-

tween 1953 and the time this transaction was closed, did Natural have any negotiations with Mr. Harrington relative to an acquisition of these very properties about which we are speaking, or at least the properties which are subject to the Natural contract, from Mr. Harrington?

A. Yes sir.

Q. Did those negotiations continue for some period of time?

A. Oh, they would go along for a while, and then they would be forgotten about. In a few months, they would be reinstituted, and then they would drop out again.

Q. Isn't it a fact that Mr. Harrington was negotiating simultaneously with this group in New York and with Natural?

A. Well, he told us that he had a group with whom he was negotiating, but during the last few months of the negotiations prior to July 1, 1954, we were not in negotiation with Mr. Harrington.

Q. I see. Now, Mr. Ross, as counsel—and you are, shall we say, lead counsel for Natural Gas Pipeline Company of America, are you not?

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A. Well, I am senior partner of the firm that is General Counsel. Let's say it that way.

Q. All I can say is that when any matter of importance concerns Natural, Mr. Ross shows up.

Mr. Ross, did you receive in your office or in the office of the law firm of Ross & O'Keefe, from time to time, copies of these documents which were finally executed outlining the whole deal and then final conformed copies prior to the closing are—or not conformed prior to the closing, but copies prior to the closing?

A. Well, we received documents designated as drafts.

Q. Yes, sir?

A. Now, how closely those drafts conformed to the final documents, I don't know.

Q. Yes, sir. Well, you came to this hearing with copies of all of these documents. When were those supplied to you?

A. Well, Mr. Harrington transmitted those sometime after July 1, 1954. I don't remember just when.

* * *

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PRESIDING EXAMINER: Mr. Ross, on the payments made by Natural to Panoma and its successors, were those made on a monthly basis?

THE WITNESS: Well, do you include Dorchester in that as one of the successors?

PRESIDING EXAMINER: Yes.

THE WITNESS: They were made on a monthly basis, but for a period of time we did not pay Dorchester anything more than the contract price. So that there was a payment of some $200,000 in bulk which covered part of several previous months, but apart from that, they are normally paid monthly.

PRESIDING EXAMINER: Directing your attention to Exhibit No. 3, which is a letter of July 29, 1954, from Natural to Dorchester, in which Natural asked Dorchester to advise as to its position with regard to the attack made by Natural on the Oklahoma 9.8262-cent order, the last sentence of that letter from Natural to Dorchester states:

"As the next payment is due about August 20th, we would appreciate your prompt reply."

The date of the Dorchester deal was July 1, 1954. Had

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any payment been made by Natural under that contract between July 1, 1954 when Dorchester took over and the date of

this letter of July 29, 1954, which is Exhibit No. 3 in this proceeding?

THE WITNESS: I don't know.

PRESIDING EXAMINER: Well, based upon your understanding as to the timing of the payments under that contract, would you expect that any such payment would have fallen due between July 1, 1954 and July 29th?

THE WITNESS: I would assume that if the payment was due on August 20th, a payment was due on July 20th, but I don't know.

Oh, that is right. Dorchester didn't begin to deliver any gas until July 1. So the first payment on the contract would be due on August 20th; that is correct.

PRESIDING EXAMINER: I see, and generally speaking, is it correct to say that the invoices, themselves, which accompanied the periodic payments under the contract, did not show any reference to the protest by Natural?

THE WITNESS: Well, I know nothing more about that than what has been exhibited to me today.

PRESIDING EXAMINER: All right; I see.

BY MR. WOODFIN:

Q. Mr. Ross, in the normal course of business—and I don't know whether you will know or not—you would have

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gone ahead and made your payment in July for the June payments to Panoma Corporation. Those runs would have gone up to July 1st to the Panoma Corporation, and in dissolution to its stockholders; is that correct?

A. Well, I assume we did.

Q. As far as you know, you made that payment?

A. Yes. Of course, all of those payments made to Panoma were made under protest pursuant to our letter of September 9, 1952, which is Exhibit No. 1.

* * *

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J. G. ECKEL

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIN:

Q. State your name, please.

A. J. G. Eckel.

Q. Where do you live, Mr. Eckel?

A. In Amarillo, Texas.

Q. By whom are you employed?

A. Dorchester Corporation.

Q. In what capacity?

A. Vice President and General Manager of its operations.

Q. What are your exact duties?

A. I have charge of everything we do, field and marketwise.

Q. When you say "everything" you do, what does that include—how many wells do you have, for example?

A. Approximately 280.

Q. Those wells are spaced what, on 640-acre squares?

A. That is true. In that country, the pattern calls for 640-acre spacing. Those are scattered, however. There are 19 wells in Kansas, 130 wells in Oklahoma, chiefly in Texas County, and the balance of them are in Gray and Carson County, Texas.

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Q. So you have three states to work in?

A. Right.

Q. How many employees do you have?

A. About 80.

Q. How many gasoline plants do you operate?

A. Two.

Q. Where are those gasoline plants located?

A. One of them is near Hooker, Oklahoma, and the other is near White Deer, Texas.

Q. Is the gas which is subject to the contract with Natural Gas Pipeline delivered at the outlet of the Hooker, Oklahoma, plant.

A. It is.

Q. Is it your job and responsibility to supervise and direct the operation and the production of those—what did you say, 280, or whatever it is?

A. Yes.

Q. And to operate the gasoline plants?

A. Yes.

Q. Now, in connection with those operations, would you detail briefly how Dorchester augments its income or what other businesses it deals in to increase its income on its operations there, other than just the production of this gas which is dedicated under this contract?

A. We have had some excess plant capacity arising from

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decreases in allowables. For instance, our plant in Hooker was originally contemplated to process some 80 million—something over 80 million feet a day, and our allowables now are much less than that.

We have had a somewhat similar situation at Cargray. So to try to get the best possible return we can out of our products and do the best we can, we split the materials we make up into the various hydrocarbon content.

We purchase some natural gasoline on the outside and bring it into our plants. We purchase that natural gas to blend out with the heavier proportion of our own make, and do out of that a sizeable automotive gasoline business.

Q. In other words, anything that you can do to increase the revenue by the use of the facilities which you have, you are out attempting every day to increase that business; is that correct?

A. Actively, yes. Actually, we process—we even process some gas for other producers.

* * *

Q. How many royalty owners does Dorchester Corporation have in total, approximately?

A. Something over 1200.

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Q. How many royalty owners do you have which are paid—which own royalties or overriding royalties in the leases which are dedicated under the contract to Natural?

A. I think the number is somewhere around 700.

* * *

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MR. WOODFIN: I want the record to clearly reflect

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that there has been incorporated by reference Dorchester's FPC rate Schedule Number 2. I want to show that filed as a part of that rate schedule, in that folder, was a letter on the

letterhead of my lawfirm, Vinson, Elkins, Weems and Searls, dated October 27, 1954, addressed to Mr. Fuquay, and indicated on there is: "Received October 28, 3:59 P.M., 1954, Federal Power Commission."

And then on the next page the document is headed: "Seller: Dorchester Corporation; Field: Hugoton; Purchaser: Natural Gas Pipeline Company of America; County and State: Texas County, Oklahoma" and headed "Gas Rate Schedule No. 1."

Originally there was a number 1 but the Number 1 has been stricken. I want to also show that that filing includes as a table one invoice of Natural Gas Pipeline Company of America dated July 31, 1954, addressed to Dorchester Corporation, 701 First National Bank Building, Amarillo, Texas, which indicates the price of .098262 cents per Mcf.

The second page is an invoice dated July 31, 1954; and next an invoice dated June 30, 1954; all such invoices being Natural Gas Pipeline Company of America at Amarillo, Texas. This one is addressed to Panoma Corporation, 701 First National Bank Building, Amarillo, Texas, showing a price of .098262 cents.

Another invoice of Natural Gas Pipeline Company of America dated June 30, 1954, addressed to Panoma Corporation at the

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same address. And a third invoice dated July 31, 1954, Natural Gas Pipeline Company of America, addressed to Panoma Corporation, showing a price of .098262 cents.

I have copies of each of those documents here, which, for convenience, I would like to file as an exhibit in handling the record so that it will not be necessary to go to the files of the Commission to look at those particular documents.

PRESIDING EXAMINER: I may say that this goes back to the questions which were raised on the first day of the hear-

ing. At that time counsel for Natural offered in evidence as Item A by reference what was referred to as Gas Rate Schedule Number 2 of the Dorchester Corporation.

And in receiving Item A in evidence by reference, the Examiner stated that he was receiving in evidence Gas Rate Schedule Number 2 as so identified in the files of the Commission. And it is described in the Commission's hearing order which was issued on May 20, 1955. Now, I have before me the Federal Power Commission file which bears the title sheet or the heading "Dorchester Corporation, FPC Gas Rate Schedule Number 2." And in that file there appears the contract of December 1, 1946 between Harrington and Marsh and Natural, which has been stamped with the ledger "Gas Rate Schedule Number 2," and the supplements 1, 2 and 3. There also appears in that file certain other attachments to that rate filing.

And there appears the invoices referred to just now by

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Mr. Woodfin. And there also appears in that file a copy of the letter signed by David T. Searls, a member of Mr. Woodfin's law firm, and bearing the heading described by Mr. Woodfin.

There might conceivably be some confusion as to whether those invoices and that letter are now in evidence in this case as part of Item A by reference due to the fact that in the Commission file which I have before me someone has written in ink at the top of those particular documents, namely, the letter and the invoices—someone has written in ink the words "schedule number 1."

And, therefore, in order that there may be no question whatsoever but that those matters are part of the record in this case, I think it would be a good idea to follow Mr. Woodfin's suggestion, and if he wishes to offer those particular matters in evidence now as separate exhibits, I will be glad to receive them.

MR. McGOWAN: Mr. Examiner, you have just referred to the letter signed by Mr. Searls which you say appears in that file, official file, and which is headed "Gas Rate Schedule Number 1." I believe that Mr. Woodfin is offering a letter—who is the transmittal letter signed by?

MR. WOODFIN: That is signed by Mr. Searls, addressed to Mr. Fuquay. I want to offer them both.

MR. McGOWAN: Could I inquire as to whether both of those

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are in the file?

* * *

PRESIDING EXAMINER: I have just examined the document which you have just handed to me which consists of the matters you described a moment ago, and consists of a transmittal letter dated October 27, 1954, addressed to the Secretary of the Federal Power Commission signed by the firm of Vinson, Elkins, Weems and Searls representing Dorchester Corporation, and it has attached to it the document you referred to as a letter from Mr. Searls describing the matter in some detail. And it also has attached to it the invoices which you described a moment ago.

This was not the total rate filing, was it?

MR. WOODFIN: The total rate filing consisted of that, the basic contract, an amendment to the basic contract; and there was also a copy of the Oklahoma minimum price order number 26906 attached.

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PRESIDING EXAMINER: All right. And I take it these particular matters which are stapled together and which you desire now to put in as exhibits—these constitute matters

which were filed as part of the package of the original rate filing and which you fear are not properly designated as Dorchester FPC Gas Rate Schedule Number 2.

MR. WOODFIN: I think on file with the Commission that they are; but I want to make sure that I have it in the record because that to me is a very important point.

* * *

PRESIDING EXAMINER: All right. Let me put it this way. I take it that the desire of Mr. Woodfin is to have this record show the entire package of material which was filed or mailed by Dorchester Corporation to the Federal Power Commission as its rate filing.

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The record now shows, without any question, that certain of the items in the total package were filed by the Commission under the heading "Gas Rate Schedule No. 2," and to that extent, those matters are now in evidence by reference as Item A.

If there are any other parts of the total package which are not clearly identified in the Commission files, as Gas Rate Schedule No. 2, Mr. Woodfin desires that those remaining portions now be received in evidence, and that the record should show that those other parts of the package were also mailed to and received by the Commission.

MR. WOODFIN: And that they are in the file, FPC files, under the filed jacket carrying Dorchester Gas Rate Schedule No. 2.

PRESIDING EXAMINER: All right.

* * *

PRESIDING EXAMINER: Well, I will say this: I don't want to belabor this. Now, I have before me, as I have stated before, the Commission file designated Dorchester Corporation

FPC Gas Rate Schedule No. 2, and I find that that file does contain the statement that the—the four-page statement which has been referred to as a letter signed by Mr. Searls bearing the heading "Seller Dorchester Corporation; Field—Hugoton, and so forth."

It also contains the invoices which have been described

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by Mr. Woodfin in his earlier statement. I don't find that the file contains the transmittal letter. I don't record that as of importance one way or the other, but I don't see any harm in the record showing that was part of the bundle.

It doesn't prove anything one way or the other, but it doesn't do any harm. I don't think the record will be overburdened by having this two-page letter.

* * *

PRESIDING EXAMINER: Gentlemen, I am frankly not concerned with deciding as a legal matter whether the three- or four-page document which has been referred to here, which is a narrative description by Dorchester as to its position in connection with the rate filing—I am not interested in determining whether that is part of the rate schedule or not.

I am merely interested in Dorchester being given an opportunity to show if that is a fact, that they did actually submit that statement to the FPC as part of their rate filing, regardless of whether the Commission put it in File A or B or whatever it was.

On that basis, I am going to identify the document which

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has been handed to me as Exhibit No. 16, and in order to make perfectly clear what it is, that document consists of the following matter which is stapled together:

First, a letter of October 27, 1954, addressed by the firm of Vinson, Elkins, Weems & Searls to the Secretary of the Federal Power Commission, which appears to be a transmittal letter forwarding the Dorchester rate schedule.

That document bears the words at the top "Received October 28, 1954, Federal Power Commission."

The next matter attached to it is the document of four pages, including the verification at the end which bears the heading "Seller—Dorchester Corporation; Field—Hugoton; Purchaser—Natural Gas Pipeline Company of America; County and State—Texas County, Oklahoma."

That document appears to be a narrative description of the position of Dorchester with regard to the rate filing.

The final matter attached is photostatic copies of invoices on the heading of Natural Gas Pipeline Corporation of America and addressed to Dorchester Corporation. The first is dated July 31st. There are two of them dated July 31, 1954. The next one is dated June 30, 1954; there are two under that date. The final one is dated July 31, 1954.

Just to button it up, Mr. Woodfin, are you stating that these documents which I have now described were all mailed by your firm to the Federal Power Commission as part of

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your rate filing?

MR. WOODFIN: They were filed by me, personally, in the Secretary's office as a part of the rate filing. I may make the further statement that no part of it has ever been returned to us or rejected so far as we know.

PRESIDING EXAMINER: All right.

* * *

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MR. WOODFIN: Mr. Examiner, I would like to next incorporate by reference the opinion of the Commission in Opinion

No. 269 issued on April 15, 1954, in the matters of Panhandle Eastern Pipe Line Company, Docket Nos. G-1116, for the purpose of showing that in that case the Commission found and acted upon the fact that the weighted average price of gas in this particular field, Guymon-Hugoton Field in Texas County, Oklahoma, was 11 cents per Mcf at a pressure base of 16.4.

MR. McGOWAN: I object to that offer for the same reason as I have stated previously.

* * *

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PRESIDING EXAMINER: Without going into any of the other possible objections which might be made, I am going to refuse or deny the request that I take administrative

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notice of the field prices found by the Commission in Opinion No. 269 in the Panhandle Eastern case. My position is based on the same reasons I gave for excluding the other exhibits relating to the reasonableness of the Dorchester Company.

* * *

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CHARLES LESLIE RICE, JR.

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIN:

Q. Mr. Rice, do you have before you—

PRESIDING EXAMINER: Pardon me.

Give the reporter your full name, please, Mr. Rice.

THE WITNESS: Charles Leslie Rice, Jr.

BY MR. WOODFIN:

Q. Where do you live, Mr. Rice?

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A. I live in Redbank, New Jersey.

Q. By whom are you employed, or what is your occupation, Mr. Rice?

A. I am chairman of the board of Dorchester Corporation, chairman of the board of the parent company, Oil and Gas Property Management, and vice president in charge of the oil and gas department of the Empire Trust Company.

Q. Mr. Rice, are you familiar with the transaction by which Dorchester Corporation acquired certain interest in gasoline plants and leasehold properties from the stockholders of Panoma Corporation?

A. I am.

* * *

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Q. Mr. Rice, at the time you closed this transaction were you familiar with the Panhandle Eastern Pipeline decision, Opinion No. 269 of the Commission?

A. I was.

Q. Were you familiar with the fact that that Commission had allowed Panhandle Eastern a fair field price for its gas?

A. I was.

Q. Were you further familiar with the fact that one of those fields involved was the Guymon-Hugoton field in Texas County, Oklahoma?

A. I was.

Q. And that the price allowed Panhandle in Order No. 269 was a rate of 11 cents and 16.4 pounds psia?

A. I knew that it came out to 9.8262.

Q. At 14.65 psia?

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A. At 14.65.

Q. You knew that at the time you concluded the transaction to purchase these properties?

A. I did know that, yes, sir.

* * *

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Q. How much of that money has Dorchester actually received, Mr. Rice?

A. Dorchester receives, of the monies that are paid by Natural, 3½ percent. That is after exclusions, which include royalties.

* * *

THE WITNESS: The money, sir, flows to the trustee, which is the First National Bank of Dallas, who are trustees under the mortgage. The debt is Cortez' debt. It is not a debt of Dorchester Corporation.

So the money flows to the trustee to be applied first to interest and then to principal, to retire Cortez' debt.

BY MR. WOODFIN:

Q. Mr. Rice, is it not more accurate to state that you receive 3½ percent of approximately 80 percent of that amount?

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A. Yes. The difference between 80 and 100 being the exclusions to which I referred, which would be largely royalties.

Q. The gross amount of the proceeds comes in, and approximately 20 percent of that amount goes to royalty owners, is that right?

A. Yes, sir.

Q. How many royalty owners are there approximately in Texas County, Oklahoma, in this Hugoton field?

A. Approximately 400.

Q. Do you know what the approximate size of each royalty check is?

A. It averages out on that basis—it is an average check of about $55 per month, and the royalty owners generally speaking, are people living in that area.

Q. Is that area known as the Dust Bowl?

A. Well, it is not a very rich area, and the royalties do represent something of considerable importance to most of the royalty owners.

Q. On what basis have those royalty payments been made?

A. We have paid the royalty owners on a 9.8262 basis since July 1, 1954.

Q. And are doing so currently?

A. And are doing so currently.

* * *

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Q. Mr. Rice, you indicate a figure of earned surplus of $103,166.83. What is your estimate of what the earned surplus will be at the end of the year when proper accounting has been made for depreciation and depletion?

A. It will be negligible after there has been charged against the earned surplus account those reserves for depreciation and depletion, which the auditors will set up.

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I would think it would be a small balance of a few thousand dollars, or a small deficit of a few thousand dollars.

Q. Mr. Rice, Dorchester has been paid, has it not, and this balance sheet reflects the payment and all figures of a price of

9.8262 cents since July 1, 1954, to March 1, 1955, and a price of ten cents thereafter?

A. Yes, sir, in so far as it relates to the 3½ percent, which is our percentage of such payments.

Q. Which is what you have received?

A. Yes, sir.

Q. Mr. Rice, do you have in your possession an exhibit entitled "Dorchester Corporation, Insurance Company Loan Application Projection Based on Ten Percent Oklahoma Gas Price"?

A. I have.

MR. WOODFIN: I ask that that be marked Exhibit No. 8 for identification.

* * *

Q. I show you the first line, which is dated July. Is that an estimated, or is that an actual figure?

A. That is an actual figure, sir.

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Q. What price is Dorchester receiving for the Kansas gas?

A. That is a price of 11 cents.

Q. And for the Oklahoma gas?

A. That is a price of 10 cents.

Q. And the Texas gas?

A. 8 cents.

Q. Are all those on 14.65?

A. Yes sir.

Q. Mr. Rice, this shows liquid revenue to Dorchester and a total leasehold revenue. Does Dorchester pay the expenses of operating the leasehold properties as well as the gasoline plants?

A. Yes, it does. May I make one comment there? This sheet which is headed "Dorchester Corporation," is headed that

way because it relates to the matter which Dorchester has before this Commission. Actually these figures reflect what is the experience of Cortez Corporation, since this money does not come to Dorchester.

Q. What I am trying to get at is: This sheet reflects 96 percent of the proceeds which are left after payment to royalty owners and 96 percent of 45 percent of the liquids from the plants, is that correct?

A. That is correct, and 96 percent of the fuel and shrinkage.

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Q. And 96 percent of the fuel and shrinkage. So Dorchester has income then which would represent 55 percent of the proceeds of the liquids from the plant, 3½ percent of the sales of the gas, and 3½ percent of 45 percent of the liquids, is that correct?

A. That is correct.

Q. Less shrinkage. And Dorchester pays the shrinkage on what percent of the plant?

Does it pay 100 percent of the shrinkage?

A. It pays 100 percent of the shrinkage and receives back 3½ percent of what it has paid.

Q. It pays 100 percent of the shrinkage which goes in two directions—55 percent of it is theoretically—would you explain that circumstance?

* * *

Q. Would you explain your last answer about the shrinkage?

A. Under the processing agreement, Dorchester, which owns the natural gasoline plant, takes the wet gas and strips it and returns the dry gas. The gas which is used in the plant is fuel and the gas which is called shrinkage or loss is a cost of Dorchester's operations and it pays the trustee that money and receives back from the trustees'

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proceeds 3½ percent.

Q. Mr. Rice, are the proceeds to Dorchester from 3½ percent of the gas sales sufficient to pay the cost of operating the leaseholds? When I say "the leaseholds" I mean the gas producing wells, not the gasoline plant.

A. No, sir, it is not.

Q. How is the difference in operating cost to the leaseholds made up by Dorchester?

A. out of its operating funds acquired from the operation of the plant.

Q. Acquired from the operation of the plant?

A. Yes, sir.

Q. Mr. Rice, the amount of funds that Dorchester will receive between now and the first of the year from the operation of the plant, are not shown on this sheet. Could you estimate for us what Dorchester will earn over and above operating expenses up to January 1, 1956?

A. The earnings of Dorchester for the year 1955 will probably be on the order of $500,000 before reserves are charged against that figure for depreciation and depletion. After those reserves have been charged, the net earnings of Dorchester will probably be plus or minus a few thousand dollars of zero.

Q. From a cash standpoint, will you—assuming that the rates stay the same, or the ten cent rate is put in

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effect back from March 1, from the cash standpoint, and disregarding the claim of Natural for some $580,000—will you have sufficient cash to meet your obligations to Chase during the remainder of the year?

A. We will have sufficient cash to meet those obligations.

Q. What do you estimate your cash position to be as of January 1, 1956?

A. Substantially the same as shown in the balance sheet as of June 30.

Q. So in effect what you will recover will be more or less depreciation and depletion, and you say a small profit, one or two thousand dollars?

A. Yes.

Q. And you are making your payments to Chase out of your depreciation and your depletion?

A. Yes, that is correct.

* * *

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MR. WOODFIN: Exhibit No. 9 will be the exhibit entitled, "Dorchester Corporation, Insurance Company Loan Payout for Oklahoma Gas Prices of 10 Cents and 6.25 cent Mcf."

PRESIDING EXAMINER: That will be identified as Exhibit No. 9.

(THE ABOVE MENTIONED DOCUMENT WAS MARKED FOR IDENTIFICATION AS EXHIBIT NO. 9.)

BY MR. WOODFIN:

Q. Mr. Rice, I refer you back again to Exhibit No. 8. This represents, then, in fact the proceeds which will be available based on a 10-cent rate to pay the insurance company loans. Is that correct?

A. That is correct. It is actual through July and August, and estimated from that point on.

Q. You estimate the volumes of gas and the price per liquids from September on. Is that correct?

A. That is correct.

Q. Does that indicate in January that there will be sufficient money in the hands of the trustees to meet the required amortization shown to be $33,700,000 in January?

A. Yes, but it shows the trustee to be $5,450 short as of January 1, which would probably have to be borrowed by

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Cortez Corporation.

Q. Do you feel that Cortez, under those circumstances if a 10-cent rate is established, will be able to borrow the $5,000?

A. With that nominal amount of money it could borrow or use its own funds.

Q. Mr. Rice, if the 10-cent rate is not established and if this projection was based up to January 1 on a 6.253 cent rate from July 1, 1954, to that date, would there be sufficient funds for the required amortization?

A. There would not.

Q. Does the $33,700,000 figure represent the balance remaining on the principal amount of the $35 million loan?

A. $33,700,000 represents at that time the remaining unpaid balance of the loan by Metropolitan and Mutual Life Insurance Companies.

* * *

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Q. Mr. Rice, with respect to Exhibit No. 9, this exhibit does not show, does it, the amount of profit or cash which will come to Dorchester until the pay-out of the $35 million loan. Is that correct?

A. That is correct. This is a sheet which shows the pay-out of the loan made by the two insurance companies under a mortgage held by the insurance companies against Cortez Corporation.

Q. Based on the top projection, Case No. 1, that states it is based on the gas proceeds, Oklahoma price of 10 cents, Kansas,

of 11 cents, and Texas, of 8 cents and 15 cents. Would you explain the reference to the Texas price?

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A. The gas in Texas is sold to Northern Natural Gas Company under a contract which provides for price renegotiation to a just and fair and reasonable price as of July 1, 1957, and each five years thereafter.

Based on the fact that Northern signed a contract on April 15, 1954, with Kerr-McGee for gas in the proximity of the Dorchester plant at a price of 16.1583 cents per Mcf, and subject to escalation, we for purposes of this projection used 15 cents.

Q. Mr. Rice, what amount of money do you estimate Dorchester will earn during 1956, 1957 and those years for whatever period you want to take it out to the expiration of the insurance company loan?

A. It is our sincere hope that Dorchester, which is primarily in the business of manufacturing products at the two gasoline plants, will by virtue of improved price for liquids, by virtue of possible additional gas which we can place under contract to put through our plant facilities, by virtue of additional gas we may ourselves acquire if it is economically sound to build up a flow of cash in Dorchester which will be sufficient to meet our obligations to The Chase National Bank and to Harrington, et al.

We are currently earning under present circumstances around $500,000 a year in cash so that if you had a projection over a period of years, we would earn under circumstances as

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they exist today, projecting into the future, that amount or slightly less each year.

Q. But that is without provision for depreciation or depletion, is it not?

A. That is correct, cash earnings.

Q. That is cash flow, working cash coming back to Dorchester Corporation.

A. Yes, sir.

Q. Would you explain to me on this Case No. 1 when the insurance company loan is paid out, what Dorchester's position will be?

A. On Case No. 1, the insurance company loan will be paid out during the year 1971. At that time there will be a flow of money to Dorchester Corporation until such time as the grantee proceeds pay-out has equaled $38 million. In short, we will earn at that time some portion—if not all, some substantial part—of $3 million which is roughly our investment in the picture.

Q. That is deferred until 1971. Is that correct?

A. That is 1971 on this schedule.

Q. Is that indicated under the year 1971, where the zero is under the column heading, "Beginning Year Balance"? Is that where the insurance company loan is paid out?

A. That is where the insurance company loan is paid out. There is $2,498,000 available to pay to us rather than to the

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insurance companies. In other words, they have been completely retired as far as their $35 million loan is concerned.

Q. This figure grantee proceeds payout, that indicates that when that figure is exhausted, then you will start receiving the remainder of those funds or will you go to a smaller percentage?

A. We will go to a smaller percentage and the monies flowing out of the property will be shared between Harrington, et al, on their deferred gas payment, the insurance companies on their deferred interest payment, and Dorchester Corporation.

Q. In making this projection, what gas volumes have you used?

A. In making—

Q. Both the projections, Case 1 and Case 2.

A. Those projections were, I believe I am correct in this, set forth in the DeGolyer and MacNaughton report.

Q. What price for liquids have you used?

A. We have also used the liquid prices that were set forth in the DeGolyer and MacNaughton report.

Q. Are those liquid prices which were used in that report slightly higher or higher than the liquid prices which are in effect today?

A. Yes, they are slightly higher. Of course liquid prices are volatile. At any given time, you are either in a period of good liquid price or poor liquid price.

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At the moment, taking what we are receiving for our liquids, I think we are receiving actually just slightly under the DeGolyer and MacNaughton assumed prices.

PRESIDING EXAMINER: What are those liquids?

THE WITNESS: That is the plant production itself?

PRESIDING EXAMINER: Yes.

THE WITNESS: Our biggest dollar volume is natural gasoline, propane and butane being smaller dollar-wise.

BY MR. WOODFIN:

Q. Mr. Rice, I think you stated that the payout on the insurance company loan under this projection would be 1971. Isn't that an error? Doesn't it in fact indicate 1970 that the loan would be met?

A. Yes, you are correct—1970.

Q. Mr. Rice, I call your attention to the bottom of the page which has a column labeled, "Difference in Oklahoma Gas Income Between 10 Cents and 9.8262 Cents per Mcf."

A. Yes, sir.

Q. Does the difference in the amount of revenue each year between 9.8262 cents and 10 cents make any substantial difference in the payout schedule?

A. It makes a difference of approximately $30,000 a year, which is not significant in terms of total proceeds running in excess of $3 million.

Q. As a matter of fact, on a projection of this size

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for this period, you just can't make them that accurately?

A. No, sir.

Q. Mr. Rice, I refer you to Case 2, Oklahoma gas price of 6.25 cents. There we show an expense but we show an item of operating expense which isn't shown in Case 1. Would you explain that, please?

A. Case 2 assumes that because there is insufficient money to meet the minimum payments required under the mortgage, the insurance companies will accelerate and will take over the leasehold interest, in which event they will assume the cost of field operation.

The operating expense set forth is divided into four portions direct field expense; general and administrative; compression expense; and equipment expense.

Q. That is expense which is now being subsidized or carried by proceeds from the liquids in some portion?

A. In Dorchester, yes, sir.

Q. What proportion of that is paid out of liquid payments? Do you know?

A. All of that expense except that which would be unusual to the insurance companies, and there may be some portion of

that in general and administrative. All of that expense is currently borne by Dorchester out of its operating income.

Q. How much of that expense does the 3.5 percent that you

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get from the gas cover, approximately?

A. Approximately half.

Q. On your Case 2, projection shown on Case 2, state what happens, please.

* * *

Q. Mr. Rice, let's assume that the bill which Natural

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Gas Pipeline Company sent you is a valid one and that you owe them some $580,000 plus interest. If that goes to judgment, and is enforced by judgment, will Dorchester be able to stay alive to operate these properties if the rates drop to 6.25 cents?

MR. GOLDBERG: I object.

PRESIDING EXAMINER: Yes, I sustain the objection.

BY MR. WOODFIN:

Q. On the 6.25 cents application, is the loan paid out through 1974?

A. No sir, it is not.

Q. You can't tell whether that would pay out or not from that projection, can you? Does Dorchester ever receive back any of the $3 million which it has put into the property?

A. No, sir.

* * *

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MR. GOLDBERG: Under the minimum schedules there you show that as of January 1, 1970, the insurance company loan will be paid off.

THE WITNESS: As of January 1, 1970, there will be $1,922,000 to be paid; and against that you have $2,581,971 to pay interest first, and then that principle. So during that year that loan will be paid out.

MR. GOLDBERG: I didn't know when you answered Mr. Woodfin's question whether you said January 1, 1971, would be the date or January 1, 1970.

THE WITNESS: It is all paid out as of January 1, 1971. It is paid off during the year 1970.

PRESIDING EXAMINER: Then why do you show under 1970 in that column, "Balance as of January 1, 0"?

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THE WITNESS: I believe that 0 is under 1971, is it not?

PRESIDING EXAMINER: Not on the copy that I have.

THE WITNESS: This is a term loan that has been made, and under the minimum payments there would be an amount due at the terminal point of the loan which would be $10,990,000. So in theory, unless the insurance companies decide to extend the maturity one year, we would have to arrange alternate financing so that Cortez could pay off that loan.

PRESIDING EXAMINER: So it is simply a refinancing time rather than satisfaction.

THE WITNESS: Yes, sir; it was a fifteen-year loan.

MR. FLANAGAN: Mr. Examiner, those figures on the top line give effect to the combination of the minimums in the Mutual and Metropolitan notes. There is nothing theoretical about that top line. They are the actual cumulative minimums that have to be met on payments on account of principal.

MR. BEGLEY: May I clarify one further thing on the basis of that? On the 1957 beginning year loan balance of $32,240,844,

that is more than what you have under your minimum of $32.100,000. So you would have to make a payment of $140,844 to bring that down. Is that right for that year?

THE WITNESS: That is correct. And Cortez at that point will have to convince a lender that it is good for $140,000 so that it can make its payments current, and then arrange with the trustee to get that money back in some form. They have done

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that before if they were short a relatively few dollars. This is a larger amount, but as you will note we hope that year we will be renegotiating our price on our Texas gas.

* * *

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BY MR. WOODFIN:

Q. Mr. Rice, do you have at this time available any exhibits prepared on a cost of service basis, using the gross amount paid for the properties as the basic cost, and using the operating expenses which you have experienced and projected and a ten percent rate of return, or any other rate of return selected by you you may deem just and reasonable in this matter to reflect on a cost of service basis as it is traditionally known to the Commission, what that would reflect as compared to the 10 cent price?

A. We do not have such an exhibit prepared.

Q. Are you willing to prepare such an exhibit and submit it to this hearing?

A. If the Commission would like such a schedule, we would be more than willing to prepare it.

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J. G. ECKEL

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIN:

Q. Will you state your occupation, Mr. Eckel?

A. I am employed by Dorchester Corporation as manager of its operations—that is, its producing, manufacturing, and marketing. I am a vice president of the company.

Q. As part of your duties, are you required to keep up with the current gas contracts and the price of gas in the Oklahoma-Hugoton field known as the Guymon-Hugoton field, Texas County, Oklahoma?

A. I am required to have a rather close set of information on such prices.

Q. Do you attempt to keep current information and keep yourself abreast of all of the developments with respect to prices in that field?

A. So far as it is possible. I have a majority of the information.

Q. How do you acquire that information, Mr. Eckel?

A. From exchanging notes with other producers in the field, a study of reports that have been made, and with regard to Texas County prices, I have made a search of the Federal

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Power Commission records myself.

Q. Is it also true that you keep abreast of the prices in the Kansas portion of the Hugoton field in the same manner?

A. Yes, we have production in that area.

Q. What about the West Panhandle field in Texas?

A. Our Cargray plant is located in the West Texas field and I try to keep up with the prices in that area.

Q. Do you try to keep up with prices generally in the entire area comprising the Panhandle Hugoton field?

A. Yes.

Q. Mr. Eckel, you stated that you have made an examination of the prices being paid or being received by producers in the Oklahoma Hugoton field. I will ask you if you have before you a schedule labeled "Texas County, Oklahoma," which has seller, purchaser, contract date, FPC number, delivery point, price 1954 contract, 14.65 paid, volume and month?

A. I do.

Q. Did you prepare that exhibit?

A. I prepared this study.

MR. WOODFIN: I would like to have that marked as Dorchester Corporation's Exhibit No. 10, I believe it is, Mr. Examiner.

PRESIDING EXAMINER: That will be identified as Exhibit

[507]

No. 10.

(THE DOCUMENT ABOVE REFERRED TO WAS MARKED AS EXHIBIT NO. 10, FOR IDENTIFICATION)

BY MR. WOODFIN:

Q. Did you prepare this exhibit, Mr. Eckel?

A. Yes.

Q. Does this show all sellers of gas, producing and delivering gas in the Hugoton field, Texas County, Oklahoma?

A. The list under "Sellers" was prepared, and filled out from the monthly report of the Oklahoma Corporation Commission. In so far as that shows, that is all of the producers. There are some minor interests that don't quite reconcile.

Q. Are there any companies producing gas in that field which take gas in their own systems which aren't shown on this schedule?

A. There are.

Q. What are those companies?

A. Phillips Petroleum Company, Northern Natural Gas Company, Cities Service, Kansas-Nebraska, and we did not include on this list Dorchester Corporation.

Q. With the exception of those companies which take gas in their own system, then this includes all the sellers producing and delivering gas in the Oklahoma Hugoton field, is that correct?

[508]

A. That is correct.

* * *

[513]

Q. Mr. Eckel, have you arrived at the weighted average price for the Hugoton field in Texas County, Oklahoma, as a result of your studies? If so, would you tell what that weighted average price is, and what the basis is for that based on that weighted average price?

A. I have. On the basis of 1366 producing wells, with a daily deliverability of 1933727 Mcf, from those I get a weighted price of 10.163 cents per Mcf.

Q. Have you included in that figure Dorchester Corporation or those companies producing in their own

[514]

system?

A. That is all of the wells in the County.

Q. That is all of the wells in the county, and that is on 10.— what was that?

A. 10.163 cents.

Q. 10.163 cents. That is all the wells in the county?

A. Right.

Q. What price did you use for Dorchester gas in that average?

A. I used 10 cents.

Q. Excluding Dorchester, have you arrived at that weighted average?

A. Taking the same 1366 wells, less 119 for Dorchester, I have a weighted average of 10.176 cents per Mcf. All of those are at 14.65 pounds.

* * *

Q. Would you repeat those figures, please?

A. For the entire 1366 wells in the county, I compute an average weighted price of 10.163 cents per Mcf at 14.65. Excluding the 119 for Dorchester for which I previously used a price of 10 cents per Mcf, I come up with a

[515]

weighted average for the county for the balance, of 10.175 cents per Mcf.

* * *

[517]

Q. Mr. Eckel, have you made a determination of the weighted average price of gas in the Oklahoma Hugoton Field, Texas County, Oklahoma, taking into consideration only those sellers who have contract prices, excluding gas taken into company-owned systems and excluding Dorchester?

A. Yes.

Q. What is that weighted average price, please, sir?

A. 10.303 cents per Mcf.

Q. That price does not have any effect or any result from the Oklahoma minimum price. Is that correct?

A. That is correct.

* * *

[520]

Q. Now then, Mr. Eckel, so that Mr. Goldberg and Mr. Ross will clearly understand this, have you taken a weighted average price in the field excluding any effect of the Oklahoma minimum price, and including those contract prices in there which are lower than the Oklahoma minimum price, but excluding Dorchester from that computation, and what percentage of the gas produced in the field does that represent?

[521]

A. I have computed such a price based on deliverabilities amounting to 771 million, which is 40.103 percent of the county's deliverability. For those wells, I get a weighted price of 10.303 cents per Mcf at 14.65.

* * *

[525]

Q. Do you have before you an exhibit consisting of one page, headed, "Texas County Weighted Price Data Based Upon Contract Prices"?

A. I do.

MR. WOODFIN: Mr. Examiner, I would like to have that

[526]

exhibit marked Exhibit No. 12.

PRESIDING EXAMINER: Your last offer there was entitled, "Texas County Weighted Price Data Based Upon Contract Prices." Right?

MR. WOODFIN: Yes, sir.

PRESIDING EXAMINER: That will be marked Exhibit No. 12 for identification.

(THE ABOVE MENTIONED DOCUMENT WAS MARKED FOR IDENTIFICATION AS EXHIBIT NO. 12.)

BY MR. WOODFIN:

Q. Mr. Eckel, I refer you to Exhibit No. 11. Will you state what Exhibit No. 11 shows on the first page thereof?

A. It lists the producers, the number of wells, their deliverability, the price at which gas is sold. At the bottom there is a total of the wells—720—a total of the deliverabilities, which is 1,044,107 Mcf, and the weighted price average.

Q. Does that include all sellers or approximately all sellers in the Hugoton field, Texas County, Oklahoma, other than pipeline companies taking gas in their own systems and Dorchester?

A. That is correct.

Q. Is the remainder of them shown on page 2 of this exhibit?

A. That is right. That is for a total of 1366 wells,

[527]

a daily deliverability of 1,933,727 Mcf, and a weighted price of 10.163 cents per Mcf.

Q. That includes Dorchester at 10 cents. Is that correct?

A. That is correct.

Q. If you exclude Dorchester, what is that average?

A. If we exclude Dorchester, we have a price of 10.175 cents per Mcf—all at 14.65.

Q. Now, Mr. Eckel, I call your attention to Exhibit No. 12 and ask you to state what that exhibit represents.

A. It is a calculation of the weighted price in Texas County of gas sold solely upon contract price without regard to the

state price order and not including Dorchester. It covers—I don't list the number of wells—777,101 Mcf, which is 40.103 percent of the county deliverability. On that I get a weighted price average of 10.303 cents per Mcf.

* * *

[559]

Q. Mr. Eckel, would you turn to Exhibit No. 12 which is your computation based upon Texas County weighted price data, based upon contract prices, and tell us what additions you have made to that exhibit?

A. I have added these items. One, Republic deliverability, 1 million, contract price, 8.9329. Skelly, 124885, changed price, 9.8262 to 10.85.

* * *

[563]

Q. What is the weighted average price in the field for the producers as shown which give no effect to the Oklahoma minimum price?

A. 10.245 cents at 14.65.

* * *

[572]

MR. WOODFIN: Mr. Examiner, I have a statement with respect to the price inquired about by Mr. McGowan, showing the sale from Republic Natural to Panhandle Eastern in line 11 of Exhibit 10.

If you would like, I will be sworn to make this statement. I have made the examination of the records of the Commission and I want it on the record so we can make the change in the exhibit.

PRESIDING EXAMINER: I don't imagine anyone would require to have you sworn.

MR. WOODFIN: I have examined the files of the Commission and I find that that is the original contract made on 7-7-49 at 5 cents for a term of five years ending on July 7, 1954. That there is filed with the Commission the contract and the Oklahoma minimum price order of 9.8262 cents as being the price in effect on June 7, 1954, and accepted as the effective tariff of Republic for that sale.

[573]

The letter agreement changing the price was dated, as I recall, 1-31-55—No, that is when the price was made. Anyway, Mr. Examiner, I can't tell you where the 10.23338 price stands, because a good bit of the file is missing from the public reference room. All I can find now is the effective filed rate accepted by the Commission is the Oklahoma minimum price.

Accordingly, it is correct to show the 4.465 cents as the contract price, and we will make that small adjustment on Exhibit No. 12. It will be a negligible figure.

* * *

[578]

Q. Mr. Eckel, what is the magnitude of the reserves which are committed under this Natural contract as recoverable reserves as you presently carry them, or as you use them in your operations?

THE WITNESS: We calculate that our reserve in the Oklahoma Panhandle are 600 billion as of now.

Q. That is 600 billion feet?

A. Yes.

* * *

[579]

Q. That is Dorchester's reserves in the Guymon Hugoton field, in Texas County, Oklahoma, or the gas which Dorchester has at least a partial interest in, is that correct?

A. Correct.

Q. All of which current production from the leases from which those reserves are determined is currently being sold and delivered to Natural, is that correct?

A. Yes.

* * *

[603]

MR. ROSS: Exhibit Number 11 doesn't indicate that this is the wellhead price and the box does.

MR. WOODFIN: The box says "Wellhead residue." It is both. It is all sales. It says "Wellhead residue."

MR. ROSS: I agree with the residue, but a lot of these sales are after gathering. This implies it is a wellhead price and it is really a gathering price.

MR. WOODFIN: It is both, Mr. Ross. It is all sales. We should say "Wellhead-Residue" if we are going to be absolutely precisely correct.

We intend to include both. We are not making any differentiation there between wellhead and residue. As I understand from the witness, it is a very difficult thing to do in the Hugoton Field in the first place, and in the second place, we want to show all sales; and there is nothing added to the wellhead price to make a residue price.

MR. ROSS: You don't mean to imply that these are all residue prices at wellhead?

MR. WOODFIN: No.

MR. BEGLEY: And that also on that price figured in the

[604]

Oklahoma minimum price order, did it not? Is that right?

THE WITNESS: Where gas is purchased on that basis, it does.

MR. WOODFIN: Let me ask that question.

BY MR. WOODFIN:

Q. That was figured in on the Oklahoma minimum price order where that minimum price order was effective under the filings with the Commission which you found in the Commission's records; is that correct?

A. Correct.

* * *

[616]

Q. Mr. Eckel, based upon your knowledge of the gas prices in the general Panhandle area in Texas, Kansas and Oklahoma, what would be your opinion of what a fair market price for the volumes of gas which are contracted for under this contract would bring or would be sold for in free and collective sales between a willing buyer who does not have to buy and a willing seller who does not have to sell at this time?

* * *

[618]

A. I think that the present value of that gas, the price that is to be received for it, if available for sale under the conditions that are stated, is not less than 17 cents per Mcf on a 14.65 pound basis. And that is for the 965 Btu gas that we are delivering.

* * *

[631]

Q. Mr. Eckel, Mr. Goldberg asked you some questions with respect to Exhibit No. 11 and said that you had reflected the Oklahoma minimum price there with respect to various sellers. I will ask you, sir, if that is not the price that appears as the

effective rate schedule for those sellers on file with the Commission where you have used it?

A. It is.

* * *

[632]

MR. WOODFIN: Mr. Examiner, I would like to ask that there be incorporated by reference that portion of the Commission's opinion in the Panhandle case, Opinion No. 269, which deals with the fair field price and the treatment of Panhandle's gas supply. That commences on page 8 and extends to page 36. It shows that in that opinion, Panhandle was allowed 11 cents for gas produced in Texas County, Oklahoma, from the Hugoton Field at a pressure base of 16.4, which converted to 14.65 is 9.8262 cents.

The date of that opinion is April 15, 1954.

PRESIDING EXAMINER: I haven't made any point of this in the past, but of course the Commission can take official notice of its own opinions.

MR. WOODFIN: As long as I haven't been derelict in calling it to the Examiner's attention. I am sure they can take official notice of it in any event.

* * *

[652]

GENE M. WOODFIN

was called as a witness, and after having been duly sworn by the Presiding Examiner, was examined and testified as follows:

DIRECT EXAMINATION

* * *

[659]

BY MR. FLANAGAN:

Q. Mr. Woodfin, to the extent you haven't already done so, would you like to explain to this hearing what this map purports to show?

A. This map purports to show contracts which have been made within fairly recent years, and I have picked 1952 because with the exception again of the system contracts about which I testified, I don't believe any of these contracts predate 1952. That would be just about the time that they started.

All of these contracts are for quantities or for what I would call substantial quantities of gas. They may be anywhere from 15 to 20 to 85 to 100 million feet of gas. But most of the contracts shown on here—for example, the United Fuel contract in the Houma area, in the Bourg field, which is shown just above the "f" in "of" in "Gulf of Mexico," that contract is for approximately 60 million feet of gas a day.

[660]

That is at a starting price of 16 cents. It escalates four mills a year, and the buyer pays the 1 cent Louisiana gathering tax which makes it a net 17 cent contract.

The most recent contracts that have been entered into in Louisiana, practically all of those contracts for any sizable volumes have been 20 cent contracts. The Texas Gas Transmission contract with Union Oil of California at East Lake Palourde, 20 cents, plus 1 cent Louisiana gathering tax, was entered into within the past year. I have the date; if anyone wants it, I can find it.

That contract, as I recall, is for approximately 50 to 60 million feet a day.

The largest volume contract represented on this map is the sales made by Superior Oil Company to the American Louisiana Pipe Line Company for delivery at Lowry. That gas is produced in what is known as the Rockefeller Preserve in Cameron Parish, Louisiana, and will be transported by Superior some 60 miles and delivered to American-Louisiana near Lowry, Louisiana.

The Commission has issued certificates, both to American-Louisiana and to the other sellers in that docket, to construct the facilities and to make the sales under those contracts.

That gas goes to the Detroit area and I understand some of it goes to Milwaukee. I don't think Chicago gets any

[661]

of it.

One contract which I particularly would like to call to the attention of the Examiner—I think it has great pertinency in this matter—is the Transok Pipeline Company contract which covers gas reserves in Grady, Garvin and McLain Counties, Oklahoma. That contract was entered into on the 19th day of April, 1955, between Phillips Petroleum Company and Magnolia Petroleum Company.

That contract is for an intrastate sale. That contract has a starting price as indicated on the map on April 19, 1955, of 12 cents. It escalates on November 1, 1957, to 14.5 cents. On November 1, 1962, it goes to 16½ cents. On November 1, 1967, to 18.5 cents, and thereafter, renegotiated with a floor of 18½ cents.

The contract volumes start off rather small. In 1955, they are 765,000 Mcf, building up through 1979.

The contract will not reach 85,000 Mcf a day on a pressure base of 14.65 until the year 1977, at which time the price will be a minimum base price of 18½ cents, subject to renegotiation.

MR. BEGLEY: Mr. Woodfin, have you examined all of these contracts personally in preparing this map?

THE WITNESS: I have not examined every contract which Tennessee Gas Transmission has, nor have I examined every contract which Texas Eastern has. I am very familiar with the Tennessee Gas system contracts. I represent people who sell

[662]

to Tennessee. They tend to have a very standard contract.

I am also very familiar with Texas Eastern Gas Transmission contracts, since we represent them in our office in the purchase of gas. It would be foolish for me to say I have examined every one of those contracts. It would be almost a super-human effort to do so.

In each case I have secured from Tennessee and Texas Eastern, from their gas purchase departments, a statement as to the price which they are currently paying in the area, and that covers all the contracts which they have in the particular area. It doesn't appear on this map, but Texas Eastern has just recently entered into a contract at 14½ cents for gas, Mexican gas, delivered at the Texas border at McAllen, which is the furthest point south on the map.

MR. BEGLEY: In other words, some of the information that you got here was gathered by others and transmitted to you?

THE WITNESS: Absolutely, sir. It would be a physical impossibility for any one man to cover this volume of gas purchase contracts, but I believe the information which I have is reliable and I have read sample contracts in those cases, if not in connection with the preparation of this, certainly in connection with other matters which I am engaged in from day to day.

* * *

[663]

MR. GOLDBERG: The question I would like to have answered, Mr. Woodfin, is this: Are there any contracts to your knowledge which have been negotiated in the last two or three years, taking the range of volumes we have been talking about, where the prices have been less than indicated here, that you know of?

THE WITNESS: I think there would be one that I would know of, and that would be the Duck Lake contract, with Humble Oil Company in South Louisiana. As I recall, that price started out by United Gas—United has had historically low gas prices and it started out at 12½ cents, but it escalated very rapidly to a 20 cent price.

I think Order No. 174 caught it right in the middle of its first escalation to about 15 cents. I think it was a very short period of time at the 12½ cent price, and that is a very substantial volume of gas at Duck Lake.

MR. GOLDBERG: The next question I have is this: Do these represent all the contracts that you know of entered into within the last few years for these volumes of gas?

THE WITNESS: No, sir, they don't represent all, but the prices in the other contracts would be comparable, or higher. I think they would just be a repetition to try to put all of

[664]

the contracts on that have been entered into. I haven't attempted to put them all on by a matter of means, because you take in the United Fuel Gas Company situation they have some 27 contracts. They are all at the same price, except for the Erath contracts, which are at a 20 cent price.

I haven't attempted in each case in Southern Louisiana along the system of that line, to indicate 27 different contracts for example.

The same thing is true for American Louisiana. They have some contracts with Stanolind which are 18½ cents, plus the one cent. Those cover South Louisiana pretty well, and in some cases they are for very small volumes, but the deal was made as a package. So you aggregate the volumes to get your price.

I might say that in negotiations which I started in 1952, we were negotiating in Texas and Southern Louisiana which were the only fertile fields for gas at that time, and we tried through every means known to us to buy gas at the cheapest price we could, and the only gas we bought was at a price of 16 cents, or in excess thereof and we had no luck in Texas in buying any gas at that period of time in any substantial volume.

MR. ROSS: Who is "we"?

THE WITNESS: United Fuel Gas Company.

MR. McGOWAN: What period of time?

[665]

THE WITNESS: 1952 through 1954.

* * *

[676]

CHARLES LESLIE RICE, JR.

was recalled as a witness, and having been previously duly sworn, was further examined and testified as follows:

DIRECT EXAMINATION (further)

BY MR. FLANAGAN:

Q. Mr. Rice, will you state for the benefit of the Examiner and counsel for Natural, the Federal Power Commission and the State of Illinois, what the proposed course of action of Dorchester would be if it reaches a point where there is no

economic justification for the further continuance of its business?

MR. McGOWAN: May we have that read again?

PRESIDING EXAMINER: Please read it back.

(Question read.)

PRESIDING EXAMINER: Isn't that question rather self-answering?

MR. McGOWAN: What the future course of Dorchester will be under this hypothesis or that hypothesis can have nothing to do with the issue in this hearing which is the lawfulness of the 10-cent rate.

PRESIDING EXAMINER: I am afraid I agree with that state-

[677]

ment.

MR. FLANAGAN: Mr. McGowan may have a valid objection. I just wanted to ask the question and hoped that the answer would be permitted so that if certain end results take place, there will be no sharp surprise on the part of anybody here interested or involved.

PRESIDING EXAMINER: As I understood Mr. Rice yesterday, the only information he had as to what might happen or what course might be taken by the mortgage holders in the event the mortgages were not paid in the amount on the date specified in the terms of the mortgages was that nobody had expressed any views to him; that he didn't know whether they would be willing to reform those papers to fit the situation, or whether they would foreclose it.

Can we go any further than that?

MR. FLANAGAN: Maybe I didn't make my point clear, Mr. Examiner. What I wanted the record to show would be

[690]

MR. WOODFIN: Your Honor, I was going to point out on the 30-days' proposition that that will put it on November 12, which is a Saturday. I was going to suggest that the matter be put over until Monday, if you are going to follow the 30-day time limit.

I don't want to appear as agreeing to a 30-day extension, because I have tried to make my case on the record to show the necessity for an early determination in this matter. But I do want to make this point clear, which I stated in my opening remarks.

[691]

There is pending before the commission in this same docket —and incidentally, I don't want to be in the position of arguing with your Honor that it is all one record. I don't want to have to take two cases up on a 19(b) appeal. I think if we have one docket, we have one docket. I have put my evidence in, but I don't want to appear to have concurred with that ruling.

But be that as it may, if the Commission should decide in my favor on one issue which is in the bond case, namely, that the so-called conditional order about which there has been considerable dispute between the Staff and myself as to the effect of that order, and as my filed rate as of June 7, the effective rate, was 9.8262 cents, which as shown in the evidence here is for all other people out there, then I as I stated here before, if that is the situation, we are in a position to withdraw this rate case.

We are not per se for ten cents. We are simply trying to be accorded what we feel is the same treatment as has been accorded to the other producers in that field, and to keep our head above water.

I am not here in a position of seeking the small $21 or $22,000 a year that would be the difference between the 9.8262 cents which we concede to be our price in effect on June 7, 1954, and the 10 cent rate. But of course if the Commission does rule against me on that, I am very much

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likely to proceed with all vigor to attempt to preserve that basic position and for that reason it may be that there can be a decision in that matter prior to the next convening of this hearing.

* * *

the possibility of a shutdown of the operations on these properties and a failure of these properties to make deliveries into the Natural system of some 70 million to 80 million cubic feet a day; and that no one should just rest on the theoretical prohibition against a corporation failing to deliver when nobody was any longer concerned in that corporation whether it could or would make those deliveries.

PRESIDING EXAMINER: I think the objection to the question

[678]

in this form is valid and I will sustain the objection. If you care to reform your question and get the information that you are seeking some other way, if you can show its relevance—I take it we all know that any corporation will discontinue business when business is no longer profitable.

I don't know just beyond that what he could say.

MR. WOODFIN: Mr. Rice, I believe that is all.

* * *

[703]

PRESIDING EXAMINER: I now call to order the hearing in the matter of Dorchester Corporation, Docket Number G-6505, pursuant to the recess heretofore taken on October 13, 1955 in this rate proceeding.

I will now receive any appearances not heretofore entered.

Apparently there are no additional counsel present.

Orders were issued by the Commission, as I assume counsel are all aware, permitting intervention and participation in this hearing which was specifically limited to the matters affecting asserted rights and interests set forth in the petitions to intervene as follows:

Natural Gas Pipeline Company of America, by order issued October 12, 1955;

Oklahoma Corporation Commission, by order issued November 7, 1955;

City of Chicago and Illinois Commerce Commission, the latter being a notice rather than a petition, by order which was also issued on November 7, 1955.

The Examiner presumes that counsel have received copies of the errata transcript which contains the corrections which I approved on October 31, 1955.

The Examiner also presumes that counsel have seen and read the orders which were issued by the Commission on October 24, 1955 in the matters of Union Oil Company of California, et al.,

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Docket Number G-4331, et al.; Sun Oil Company, et al., Docket Number G-8288, et al.; and Forest Oil Corporation, Docket Number G-5510.

The Examiner further presumes that counsel for all the parties have seen the Commission order issued on yesterday, November 14, 1955, reversing the initial decision of the Presiding Examiner on the bond feature under this docket number.

At this time I will be glad to have a brief statement from counsel, commencing with Dorchester in the order of their appearance on this record regarding any motions, proposals to offer additional evidence or matters in connection with the further disposition of the proceedings.

MR. WOODFIN: Mr. Examiner, in view of the orders which you have mentioned and the fact that the order in the bond matter makes substantial disposition of the questions involving Dorchester's presently effective filed rate, and in view of the fact that counsel have not had an opportunity to discuss these matters, I would request that this hearing be recessed until 2:00 o'clock to give counsel an opportunity to confer with each other with respect to proceeding in this case.

PRESIDING EXAMINER: In the absence of objection on the part of the other counsel, the Examiner would be disposed to grant the recess.

Do you have any comment to offer?

MR. GOLDBERG: I think it is a reasonable request.

[705]

MR. McGOWAN: I think it only fair to say that the suggestion for recess originated with ourselves and Mr. Woodfin has been good enough to agree to it.

* * *

[706]

PRESIDING EXAMINER: The hearing will be in order.

This morning just before we adjourned, the Examiner had called attention to the various orders and other matters. He stated he would be glad to hear statements from counsel by way of motions or any other preliminary matters regarding the further disposition of the case.

At that time, there was a motion made by Dorchester for a recess until two o'clock in order that counsel might study the order that was issued yesterday with regard to the bond case.

May I ask now for statements from counsel as to what they propose to do in the way of offering proof or otherwise?

MR. WOODFIN: Mr. Examiner, we had the recess as requested. We have not found any clarification from opposing counsel, either Staff or counsel from Natural, and the City of Chicago, or the Illinois Commerce Commission. When I say clarification, I mean clarification of the situation that exists because of the orders which you mentioned this morning.

On the prior hearing I stated in the record that if the Commission made a determination in the bond hearing, in G-6505,

that Dorchester's rate on June 7, 1954, the initial filed rate, was 9.8262 cents, that we would withdraw the application for the 10 cent rate.

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In looking at the rules, I find no clearcut procedure to follow in this respect. I propose to file with the Secretary this afternoon the following letter:

"Mr. Leon M. Fuquay, Secretary

"Federal Power Commission

"Washington, D. C.

"Re: Docket No. G-6506

"Dear Mr. Fuquay:

"In view of the Order of the Commission of the Commission issued in Docket G-6505, November 14, 1955, finding that Dorchester Corporation's initial filed rate and its rate in effect on June 7, 1954, is 9.8262 cents, Dorchester Corporation hereby withdraws the 10 cent rate filed by it with the Commission on December 6, 1954, which filing was styled by the Commission "Supplement Number 4 to Dorchester Corporation's FPC Gas Rate Schedule Number 2."

"To give effect to the Commission Order issued on April 7, 1953, wherein the 10 cent rate was made effective under bond, Dorchester Corporation will promptly issue appropriate credit memoranda to Natural Gas Pipeline Company of America for the difference between the payments made by Natural at the 10 cent rate and the rate of 9.8262 cents, plus

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interest at the rate of 6 percent per annum, on such difference from the date of payment to the date of issuance of such memoranda.

"Copies hereof have been served upon all parties to the proceeding in Docket G-6505."

We could not propose to make any motions to reopen the case in light of that procedure to admit any additional evidence.

As to whether or not that withdrawal requires Commission approval, I am in no position to state. I cannot find it in the rules. I do not believe it is covered by 1.11, which refers to the withdrawal of pleadings. I take it as a matter of inherent right that the party has the right to withdraw anything ordinarily which he has filed unless there is some prohibitory rule against it. And that I cannot find in the rules of the Commission. But I do think that this will make our position clear on the record, and will be in harmony with our statement at the prior hearing in this docket.

PRESIDING EXAMINER: All right, Mr. Woodfin.

Do any other parties have any motions or any proposals about offering evidence at this time? The fact that Dorchester proposes to file this request with the Commission for permission to withdraw their rate filing, of course, does not mean that the hearing is over. A matter which was covered by the Commission's order setting this matter down for hearing was to determine

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the rates in conformity with the proposal that Dorchester had submitted.

As to whether or not the Commission would see fit to grant this request, of course, the Examiner does not know. That is not a matter within his province. But I would be glad to hear at this time any additional evidence. I would like a statement from the parties as to whether they propose to introduce any evidence, and whether they are prepared to cross-examine Dorchester's witnesses who testified on direct examination.

MR. McGOWAN: As I understand the situation, Mr. Woodfin has closed his direct case and proposes to take a step independently of these proceedings which he intends for the pur-

pose of terminating the proceedings. So far as these proceedings themselves are concerned, with Mr. Woodfin's case closed, we have no cross-examination of his witnesses, nor do we have any affirmative case of our own to present.

PRESIDING EXAMINER: What do the other intervenors say?

MR. BEGLEY: The Illinois Commerce Commission does not propose to cross-examine. We have no cross-examination of the applicant's witnesses, and we have no affirmative evidence to offer.

PRESIDING EXAMINER: What about the City of Chicago?

MR. BEGLEY: They are not here today.

PRESIDING EXAMINER: And the Oklahoma Commission is not

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represented, I believe, today.

What do you say for the Staff, Mr. Goldberg?

MR. GOLDBERG: Mr. Examiner, I should like to note that I am not concurring in the view that a rate filing which has been heard on the evidence which applicant has offered in support of its rate filing may be terminated by a mere letter to the Secretary. I think that the statute is clear, independently of the rules, as to how rates may be changed. So that I am not so sure that one rate may be rescinded by merely filing a letter.

As to the broader issue in this proceeding, I should like to call your honor's attention to the fact that there is still open for determination the proper contractual rate or the just and reasonable rate. And that that question is still left open.

Now, that being the case, Mr. Examiner, I take it that Mr. Woodfin has offered all of the evidence that he proposes to offer

in support of his rate filing. And in order that the Commission may have all the available evidence in this proceeding, I would move that there be incorporated by reference in this proceeding the three volumes of transcript which were heard on what we have called the bond hearing. I think that, plus the evidence that has been presented in this rate aspect, would encompass all of the evidence which the Commission would need to make a determination.

PRESIDING EXAMINER: Well, Mr. Goldberg, what is there in

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that record, aside from the evidence as to the debt structure of the Dorchester Corporation which was stricken, together with the testimony of the sponsor's witness on motion by you and some of the intervenor's counsel—what is there in addition that is material and relevant here?

MR. GOLDBERG: I have not gone into that; and I agree with your Honor that we run into that difficulty. I have tried to go through these three volumes of the bond hearing and pick and choose; but it means a lot of interspersed evidence that is just not convenient to work out. But I merely wanted that merely for the sake of—which probably does not have material which we don't have in this rate hearing, the rate schedules and the orders of the Oklahoma Commission and the decision of the Supreme Court in the Panoma case. But I felt that—

PRESIDING EXAMINER: Well, at the commencement of this hearing on October 11, the Examiner did call attention to the fact that the evidence which might have been relevant to the issues and material to the issues in connection with those issues in the bond phase of the case which was heard before another Examiner would not necessarily be relevant and material to the issues properly arising in this rate proceeding.

MR. GOLDBERG: I agree with you, Mr. Examiner; but the only thing is I would have to pick and choose some of this testimony that might be relevant. I am not so sure. But I think we have the broader question.

[712]

I am not going to be adamant about the bond hearing testimony. I think we have the broader issue and the more important issue as to the question which I think is left open, namely, of determining either the contract rate or the just and reasonable rate or the lawful rate. I think the Commission left that open in its order of November 14.

PRESIDING EXAMINER: Yes. Well, what I was about to say was that I think that there is no question about the validity of that statement as to the doubtful materiality and relevancy of that evidence to the issues here. But I also stated in the ruling in the opening statement that that evidence would not be considered as evidence in this record unless specifically offered in conformity with the Commission's Rules and received in evidence by the Examiner.

On further consideration I have concluded that since the bond proceeding and hearing and this rate proceeding and hearing were all docketed under the same Docket number, namely, Docket G-6505, that subject, of course, to the test of relevancy and materiality, the evidence heretofore included in the record of the bond hearing is technically a part of this same record. And to this extent, I now modify my former ruling which appears on pages 3 and 4 of the transcript. So, apparently that takes care of the availability of the evidence.

MR. GOLDBERG: Thank you, Mr. Examiner.

PRESIDING EXAMINER: Do you have any further motions?

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MR. GOLDBERG: I have no cross-examination of Dorchester's witnesses. I would like to move at this time, if I understand the present posture of this case, Mr. Examiner, that the intermediate decision procedure be omitted, and that we refer this matter back to the Commission on the record as we have it.

MR. BEGLEY: I join in that motion.

* * *

[715]

PRESIDING EXAMINER: All right, Mr. Woodfin. In view of the fact that you are filing this request with the Secretary of the Commission, nothing further can be done at this time, since none of the parties are ready to proceed or propose to offer any proof. I will report Staff Counsel's motion, which I understand the intervenors present have concurred in; and I understood that you did not object to it?

MR. WOODFIN: I take no position on that, Mr. Examiner.

PRESIDING EXAMINER: All right. You take no position on it?

MR. WOODFIN: No.

* * *

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PRESIDING EXAMINER: The record, gentlemen, as I understand it, is in this status:

That counsel for Dorchester now proposes through this letter which he is filing with the Secretary to ask the Commission's permission to withdraw his application for the rate increase to ten cents per Mcf. And he does not consider in view of filing that that any further proof is necessary at this time. On the

other hand, Mr. Goldberg has made a motion for the Commission to waive the intermediate decision procedure and proceed to decide the case, which has been joined in by all intervenors present, and Dorchester did not take a position for or against such motion.

Now, under the circumstances if Mr. Goldberg wants to insist on his motion, I will report it to the Commission.

MR. GOLDBERG: I should say so, Mr. Examiner.

* * *

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**Hearings, July 11-13, 1955—Exhibit 1**

**Natural Gas Pipeline Company of America**

20 N. Wacker Drive

Chicago 6, Illinois
Phone Randolph 6-0278—L.D. 411

September 9, 1952

Panoma Corporation
Amarillo, Texas

Gentlemen:

By Order No. 26096, entered in Cause CD No. 3628 on July 29, 1952, effective on and after August 1, 1952, (the enforcement of which order was stayed until September 10, 1952, by the Commission's Order No. 26111 entered July 31, 1952), it is required, among other things, that no gas shall be produced from the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead, and that if the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall be not less than

9.8262¢ per thousand cubic feet; volumes to be measured at a pressure of 14.65 pounds per square inch absolute and at a temperature of 60 degrees Fahrenheit.

Your counsel has informed us that you interpret such order as applying to the gas sold by Panoma to this Company under contract entered into between Don Harrington, et al., as sellers, and Natural Gas Pipeline Company of America, as buyer, dated as of December 1, 1946, as amended; and has also informed us that, unless payments be made by us at the minimum price set forth in such order (instead of the price set forth in such contract) you construe such order as requiring you to discontinue the delivery of gas produced by you in the Guymon-Hugoton Field in Oklahoma to us in accordance with the provisions of such contract of December 1, 1946, as amended.

Natural denies that such order can lawfully be applied to the gas so purchased by it from you under such contract of December 1, 1946, as amended. It has filed a notice of appeal from such Order No. 26096, and will prosecute that appeal and litigate the validity of that order as applied to the gas which Natural purchases from Panoma under such contract of December 1, 1946, as amended.

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Pending final adjudication as to the validity of such order as applied to the gas so purchased by Natural from Panoma under such contract, it is necessary that the gas which you have agreed by such contract to sell and deliver to Natural be delivered to it in order that Natural may fulfill its obligations to its customers and thus provide supplies of gas in the consuming areas to which Natural transports gas in accordance with its certificates of public convenience and necessity. It is impossible for Natural to replace such gas, during the pendency of such

proceedings, with gas from any other sources, on any reasonable basis.

Natural fully recognizes that, in the event such Commission order is held valid and applicable to the gas which is sold to Natural under such contract, the price provisions of such contract will be adjusted to conform to such order. It is necessary, in the public interest as well as in the interest of Natural, that Natural's dedicatory rights under such contract of December 1, 1946, as amended, be fully protected and preserved pending the appeal from such order.

Natural will, therefore, each month, upon receipt of proper accounting statements, pay in accordance with the contract price and, in addition thereto, will make payments for the difference between such contract price and the price fixed by the Commission for such gas in said order.

Payments of all sums in excess of the contract price, however, will be made involuntarily and under protest because of the compulsion and coercion resulting from the threat of the order itself and your interpretation of such order as prohibiting you from producing and delivering such gas to Natural under said contract at a price less than the minimum price fixed by the Commission in such order.

You will understand, of course, that each payment of such difference is and will be made involuntarily and under protest without an express repetition of the protest and the grounds thereof at the time of each payment. In the event such order shall be held invalid or inapplicable to the gas sold and delivered by you to us under such contract, Natural will assert

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the right under familiar doctrines of business compulsion, unjust enrichment and restitution to a return to Natural of the

additional payments so made under protest, with lawful interest thereon.

Yours very truly,

NATURAL GAS PIPELINE COMPANY OF AMERICA

By J. J. HEDRICK
*President*

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**(Exhibit 2)**

July 1, 1954

Natural Gas Pipeline Company of America
20 North Wacker Drive
Chicago 6, Illinois

In Re: Order No. 26096 of the Oklahoma Corporation Commission entered in Cause CD 3628 on July 29, 1952.

Gentlemen:

The undersigned constitute all of the stockholders of Panoma Corporation as they existed prior to July 1, 1954, at 10:00 o'clock A.M. Central Standard Time, as of which hour and date Panoma Corporation transferred all of its assets to such stockholders. The undersigned are thereafter conveying certain of the properties received in liquidation, including those subject to that certain Gas Purchase Contract dated as of December 1, 1946, between Natural Gas Pipeline Company of America and Harrington & Marsh (previously assigned to Panoma Corpora-

tion), except as to the gas reserves covered by said contract found in horizons situate below sea level.

Please refer to letter of September 9, 1952, from you to Panoma Corporation, in which you stated that you were paying under protest the price, to the extent in excess of the contract price, required by the order of the Corporation Commission of Oklahoma, No. 26096, effective on and after August 1, 1952, as to gas delivered under the contract.

It was understood that your execution and delivery of a certain instrument dated June 25, 1954, consenting to the assignment of the Gas Purchase Contract from Panoma Corporation to us, and from us to third persons, was contingent upon your obtaining the following agreement upon our part, to-wit:

That we hereby jointly and severally agree on behalf of ourselves, our executors, administrators and assigns to pay you or cause to be paid you any sums of money with lawful interest thereon which you are entitled to have refunded or returned with respect to the payments to Panoma Corporation in excess of the contract price made under protest referred to in said letter of September 9, 1952. We do aiso jointly and severally, for ourselves, our heirs, executors, administrators and assigns agree to and do hereby acknowledge and assume any obligations imposed upon Panoma Corporation by virtue of the letter you addressed to it under date of September 9, 1952.

Very truly yours,

D. D. HARRINGTON
(D. D. Harrington)

STANLEY MARSH, JR.
(Stanley Marsh, Jr.)

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ESTELLE FARISS MARSH
(Estelle Fariss Marsh)

ISABEL MARSH McCORMICK
(Isabel Marsh McCormick)

T. J. WAGNER, JR.
(T. J. Wagner, Jr.)

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**(Exhibit 3)**

**Natural Gas Pipeline Company of America**
20 N. Wacker Drive
CHICAGO 6, ILLINOIS
Phone RAndolph 6-0278—L.D. 411

J. J. Hedrick
President and General Manager

July 29, 1954

Dorchester Corporation
602 Fidelity Union Life Building
Dallas, Texas

Attention Mr. John A. Crichton, President

Gentlemen:

In re Gas Purchase Contract dated as of
December 1, 1946, covering gas reserves
in the Guymon-Hugoton Field

We understand that you have succeeded to the gas reserves (above sea level) and other properties formerly owned by Panoma Corporation and dedicated to the above contract,

subject to certain required payments, mortgages and the terms of intervening documents. We further understand that these documents direct that all payments under our contract are to be made to First National Bank in Dallas as Trustee until we are otherwise notified. Will you please confirm this for our record.

You are, of course, familiar with the proceedings of the Supreme Court of Oklahoma in Cause No. 35731, styled Natural Gas Pipeline Company of America vs. Corporation Commission of Oklahoma, an appeal from an order of the Corporation Commission of Oklahoma, No. 26096, which purported to fix a minimum price for residue gas, remaining after processing of gas produced in the Guymon-Hugoton field, sold for interstate commerce at the outlet of a gasoline plant, at a price in excess of the price provided in the contract above referred to. The Supreme Court of Oklahoma affirmed the order of the Commission, and we are now perfecting an appeal therefrom to the Supreme Court of the United States.

We did not supersede the order, but paid the price therein required under duress and with protest, as is expressed in a letter to Panoma Corporation of September 9, 1952, a copy of which

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is attached. We also have from the stockholders of Panoma Corporation a letter, dated July 1, 1954, assuring to us the payment of any amount which we are entitled to have refunded with respect to payments to that company in excess of the contract price.

Our present relations in respect to the litigation have changed in that (1) the gas reserves have been conveyed to you as of July 1; and (2) on July 16 the Federal Power Commission

issued its Order No. 174 requiring the filing of rate schedules to include—

"the basic contract and all supplements amendatory thereof effective and applicable on and after June 7, 1954."

We ask you to advise us whether you now contend that the order of the Oklahoma Commission, No. 26096, is any longer valid, considering the effect of Order No. 174 of the Federal Power Commission. If you contend that there is compulsion or right in you to exact the price provided by the Oklahoma Corporation Commission, we further ask if you will undertake to reimburse us for any amounts paid above the contract price, with lawful interest thereon, in the event it appears that the contract price is the one correctly to be applied.

As the next payment is due about August 20, we would appreciate your prompt reply.

Yours very truly,

J. J. HEDRICK

JJH:mg

cc: Dorchester Corporation
Amarillo, Texas

First National Bank in Dallas, Trustee
Dallas, Texas

bc: Messrs. Garver
Burlingame
Holmes
Ross
McDugald

[730]

**(Exhibit 6)**

**Dorchester Corporation**

PANOMA PETROLEUM PRODUCTS
602 Fidelity Union Life Building
DALLAS 1, TEXAS

August 13, 1954

Natural Gas Pipeline Company of America
20 North Wacker Drive
Chicago 6, Illinois

Attention: Mr. J. J. Hedrick, President

Gentlemen:

This will acknowledge receipt of your letter of July 29, 1954 and the enclosed copy of a letter from you to Panoma Corporation dated September 9, 1952 and of a letter from the stockholders of Panoma Corporation to you dated July 1, 1954.

By reason of the documents which were furnished to you in connection with the obtaining of the consent dated June 25, 1954, you know that Dorchester Corporation entered into the Processing Agreement at the time of the acquisition of the extraction plants and that Dorchester Corporation acquired the leasehold properties from Nalam Corporation subject to the Deed of Trust from Nalam Corporation to First National Bank in Dallas.

Your attention is directed to Section 4.01 of the Processing Agreement, particularly the last sentence thereof, which provides that Dorchester Corporation will not agree to any amendment, modification or termination of any of its rights or obli-

gations under the Natural contract without the consent of a majority in the interest of Owners.

We also call your attention to the following:

(A). Section 4.15 of the Deed of Trust from Nalam Corporation to First National Bank in Dallas.

(B). Subparagraph (f)—page 20—of the Conveyance from D. D. Harrington et al to Nalam Corporation.

(C). Subsection (1) of Article IV of the Conveyance from Nalam Corporation to Dorchester Corporation.

By reason of the foregoing covenants to which Dorchester Corporation is a party, or to which it took subject, we do not believe that it

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is proper for us to take any position at this time with respect to the effect of Order No. 174 of the Federal Power Commission upon Order No. 26096 of the Corporation Commission of Oklahoma. With respect to your request that we undertake to reimburse you for any amounts paid above the contract price, you appreciate that only 3½% of the runs under the Gas Purchase Contract accrue to the credit of Dorchester Corporation, and accordingly Dorchester Corporation is not in a position to furnish you with the undertaking requested.

Very truly yours,

JOHN A. CRICHTON

John A. Crichton, President

JAC:mer

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**(Exhibit 8)**

**Dorchester Corporation**

PANOMA PETROLEUM PRODUCTS
602 Fidelity Union Life Building
DALLAS 1, TEXAS

August 31, 1954

Natural Gas Pipeline Company of America
20 North Wacker Drive
Chicago 6, Illinois

Attention: Mr. J. J. Hedrick

Gentlemen:

Reference is made herein to the Gas Purchase Contract between Natural Gas Pipeline Company of America and Harrington and Marsh dated December 1, 1946, as amended February 25, 1948, and October 1, 1949, and your correspondence relative to that contract.

The second paragraph of your letter of August 11, 1954, refers to the Federal Power Commission Order No. 174 requiring the filing of rate schedules according to the contract effective on June 7, 1954. We wish to call to your attention Article XIV of the subject contract wherein it is provided that this contract is subject to all valid orders of any regulatory body having jurisdiction. The effective rate under this contract on June 7, 1954, was that prescribed by the Oklahoma Corporation Commission in its Order No. 26096.

Your letter of August 11, 1954, develops the point that your refusal to pay for gas taken under subject contract at the rate

in effect on June 7, 1954, is based on the Federal Power Commission Order No. 275 issued July 30, 1954, in the matter of the Michigan-Wisconsin Pipeline Company. As you know, the Commission subsequently issued on August 17, 1954, a clarification of its Order No. 275 which we have been advised in effect reverses the July 30, 1954, order.

It is our contention that the Oklahoma Corporation Commission Order No. 26096 is in full force and effect, and that we are prohibited from selling gas thereunder for less than the prescribed price. Since payment has not been made in accordance with the effective rate, we hereby demand payment on that basis for past and future gas deliveries.

Very truly yours,

JOHN A. CRICHTON
John A. Crichton, President

JAC:j
Air Mail

*Exhibit No. 9*

(Exhibit 9)

**Natural Gas Pipeline Company of America**
20 N. Wacker Drive
Chicago 6, Illinois
Phone RAndolph 6-0278 — L. D. 411

December 8, 1954

Dorchester Corporation
602 Fidelity Union Life Building
Dallas 1, Texas

Attention: Mr. John A. Crichton, President

In the Matter of Dorchester Corporation

Order Allowing Rate Schedule and Supplements to Take Effect

Gentlemen:

We are in receipt of a copy of an order of the Federal Power Commission adopted November 24, 1954 and issued November 30, 1954, captioned as above.

Said order states that on October 28, 1954, you tendered to the Federal Power Commission for filing in its Docket R-138, the basic contract between Harrington & Marsh and our company, dated December 1, 1946, and certain Supplements thereto, including a purported Supplement No. 3, being a copy of Order No. 26096 of the Corporation Commission of the State of Oklahoma entered July 29, 1952 in its Cause No. CD-3628. That order purported to fix a minimum price of 9.8262¢ per

M.c.f. at a pressure of 14.65 psia for residue gas purchased by us from you at the outlet of your gasoline plant in the Guymon-Hugoton field.

The order of the Federal Power Commission notes our protest to the filing of this Supplement, which protest asserts that the order is invalid, and that its validity is the subject matter of an appeal to the Supreme Court

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of the United States in Cause No. 321, October Term 1954, and that said Court has noted probable jurisdiction.

The order of the Federal Power Commission recites:

"In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.

"To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

and imposes the following condition:

"(B) The acceptance for filing of the aforesaid rate schedule and supplements thereto is subject to the express condition that such filing is without prejudice to any claims or contentions which have been made by or for Dorchester Corporation or by Natural Gas Pipeline Company of America

in the litigation pending before the Supreme Court of the United States in Cause No. 321, October Term 1954."

We enclose our check in the sum of $278,727.57, representing the difference between the price stated in the contract and the price specified in said Order No. 26096 of the Corporation Commission of Oklahoma, in respect to gas purchased during the period July 1, 1954 through October 31, 1954. This payment is made and all future payments pursuant to said tariff will be understood as made upon the condition that if Order No. 26096 of the Corporation Commission of the State of Oklahoma is held to be invalid, you will

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promptly thereafter refund to the undersigned all payments theretofore made to you of the difference between the price stated in the contract and the price specified in said Order No. 26096, with interest at the rate of 6 per cent per annum. Your acceptance of this payment and of each of the future payments of said difference shall be deemed to be an acceptance with respect to each such payment of the foregoing condition.

NATURAL GAS PIPELINE COMPANY OF AMERICA

By G. P. GARVER
Its Vice President

Enclosure

cc: D. D. Harrington for himself
and former stockholders of
Panoma Corporation
The First National Bank in Dallas, Texas
Metropolitan Life Insurance Company
The Mutual Life Insurance Company of New York
Cortez Oil Company

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**(Exhibit 10)**

**Dorchester Corporation**

PANOMA PETROLEUM PRODUCTS
602 Fidelity Union Life Building
DALLAS 1, TEXAS

January 3, 1955

Natural Gas Pipeline Company of America
20 North Wacker Drive
Chicago 6, Illinois

Attention: Mr. G. P. Garver

Gentlemen:

We acknowledge receipt of your letter of December 8, 1954, wherein you state in part:

> "We enclose our check in the sum of $278,727.57, representing the difference between the price stated in the contract and the price specified in said Order No. 26096 of the Corporation Commission of Oklahoma, in respect to gas purchased during the period July 1, 1954 through October 31, 1954. This payment is made and all future payments pursuant to said tariff will be understood as made upon the condition that if Order No. 26096 of the Corporation Commission of the State of Oklahoma is held to be invalid, you will promptly thereafter refund to the undersigned all payments theretofore made to you of the difference between the price stated in the contract and the price specified in said Order No. 26096, with interest at the rate of 6 per cent per annum. Your acceptance of this payment and of each of the future payments of said difference shall be deemed to be an acceptance with respect to each such payment of the foregoing condition."

If and so long as, the sale to you covered by the contract is subject to the jurisdiction of the Federal Power Commission, you are required to make payment for all gas delivered and sold thereunder in accordance with the terms of our applicable tariff on file with the

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Federal Power Commission. Our presently effective rate is 9.8262¢ per MCF for gas delivered and sold to you under and in accordance with the other terms and provisions of the contract. The receipt by us of such payment is subject only to such liabilities and obligations which we have under the Natural Gas Act and the tariff which we have on file with the Commission pursuant thereto.

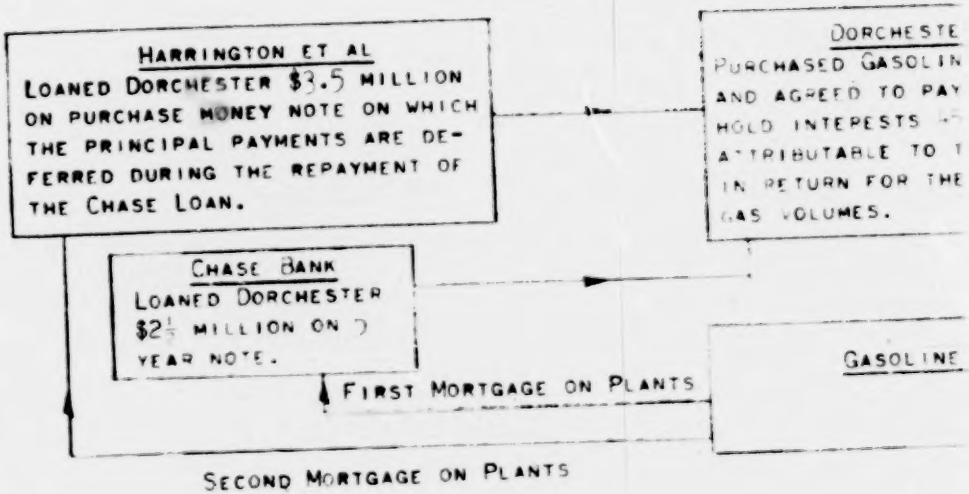
The acceptance of your check is without prejudice to our right to interest as set forth in our letter to you of August 18, 1954. You appreciate that we acquired the properties and succeeded to the position of Panoma Corporation under the contract subject to the terms and provisions of that certain Deed of Trust, Mortgage, and Assignment by Nalam Corporation to the First National Bank of Dallas, Texas, dated July 1, 1954.

Very truly yours,

JOHN A. CRICHTON

John A. Crichton
President

JAC:ms


HARRINGTON ET AL
LOANED DORCHESTER $3.5 MILLION ON PURCHASE MONEY NOTE ON WHICH THE PRINCIPAL PAYMENTS ARE DEFERRED DURING THE REPAYMENT OF THE CHASE LOAN.
DORCHESTE
PURCHASED GASOLIN AND AGREED TO PAY HOLD INTERESTS ATTRIBUTABLE TO IN RETURN FOR THE GAS VOLUMES.
CHASE BANK
LOANED DORCHESTER $2½ MILLION ON YEAR NOTE.
GASOLINE
FIRST MORTGAGE ON PLANTS
SECOND MORTGAGE ON PLANTS

FEDERAL POWER COMMISSION DOCKET NO. G-6505
IN THE MATTER OF DORCHESTER CORPORATION
EXHIBIT NO 1

# DORCHESTER CORPORATION
## THE ACQUISITION OF GASOLINE PLANTS AND RESIDUAL INTERESTS IN CERTAIN GAS LEASES FORMERLY OWNED BY PANOMA CORPORATION

JULY 1, 1954 TRANSACTIONS

**PANOMA CORPORATION**
ASSETS DISTRIBUTED IN DISSOLUTION TO HARRINGTON ET AL

**HARRINGTON ET AL**
GASOLINE PLANTS — LEASEHOLDS

**DORCHESTER CORPORATION**
PURCHASED GASOLINE PLANTS FOR $6.5 MILLION AND AGREED TO PAY THE OWNERS OF THE LEASEHOLD INTERESTS 3/8 OF THE LIQUID VALUE ATTRIBUTABLE TO THEIR WORKING INTEREST GAS IN RETURN FOR THE RIGHT TO PROCESS CERTAIN GAS VOLUMES.

**GASOLINE EXTRACTION PLANTS**

**NALAM CORPORATION**
PURCHASED LEASEHOLD INTERESTS FOR $37 MILLION WITH SELLERS RESERVING A DEFERRED PRODUCTION PAYMENT IN THE AMOUNT OF $75 MILLION PAYABLE OUT OF DRY GAS COMMENCING WHEN THE PROPERTIES HAVE PRODUCED $38 MILLION WITH INTEREST AT 5%.

**METROPOLITAN AND MUTUAL**
LOANED NALAM $35 MILLION REPAYABLE OUT OF 96% OF THE LEASEHOLD PROCEEDS.

**NALAM LEASEHOLD INTERESTS**
DRY GAS AND 45% LIQUID PAYMENT

NALAM INTERESTS MORTGAGED TO LENDERS

**DORCHESTER CORPORATION**
ACQUIRED FROM NALAM FOR $2 MILLION, SUBJECT TO THE METROPOLITAN AND MUTUAL MORTGAGE, A 3% INTEREST IN THE LEASEHOLDS, WHICH INTEREST INCREASES IN VARYING AMOUNTS FOLLOWING REPAYMENT OF $35 MILLION PLUS 5% TO INSURANCE COMPANIES.

**CORTEZ OIL CORPORATION**
ACQUIRED FOR $25,000 FROM NALAM CORPORATION, A PRODUCTION PAYMENT CARVED OUT OF THE LEASEHOLD INTERESTS AND PAYABLE OUT OF 96½% OF LEASEHOLD PROCEEDS UNTIL INSURANCE COMPANIES HAVE RECEIVED $35 MILLION PLUS 5% INTEREST THEREON AND THEREAFTER OUT OF REDUCING PERCENTAGES OF SUCH PROCEEDS.

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**(Exhibit 11, Part 2)**

Federal Power Commission Docket No. G-6505
In the Matter of Dorchester Corporation
Exhibit No. 1-A

## MEMORANDUM

Re: Acquisition by Dorchester of Panoma Corporation Properties

Basically the transaction involved:

1. The dissolution of Panoma Corporation ("Panoma") and the distribution of its properties to the stockholders ("Harrington, et al");

2. The sale by Harrington et al to Dorchester Corporation ("Dorchester") of two gasoline extraction plants (one in Oklahoma and the other in Texas), a field gathering system in Oklahoma, petroleum products, tank cars, automotive equipment and other related facilities;

3. The execution of an agreement between Harrington et al, as the owners of the leasehold interest, and Dorchester, as the owner of the gasoline extraction plants for the processing of gas ("Processing Agreement");

4. The conveyance by D. D. Harrington et al to Nalam Corporation ("Nalam") of their above-sea-level interests in certain properties in the Guymon-Hugoton Field in Oklahoma and Kansas and the Panhandle Field in Texas;

5. The conveyance by Nalam to Dorchester of the properties acquired by Nalam from Harrington et al subject to the reservation of a primary gas production payment; and

6. The conveyance by Nalam to Cortez Oil Corporation ("Cortez") of the reserved primary gas production payment.

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A more detailed account of the transaction, particularly with respect to the Oklahoma properties, is as follows:

(a) D. D. Harrington et al conveyed to Dorchester by a conveyance dated July 1, 1954, the gasoline extraction plants and other properties and facilities referred to in the preceding paragraph, including the gasoline extraction plant located in Hooker, Oklahoma;

(b) The Processing Agreement referred to in the preceding paragraph was dated July 1, 1954 and related among other things to the processing in the Oklahoma plant of the natural gas which was subject to the gas purchase contract dated December 1, 1946, between Natural Gas Pipeline Company of America ("Natural") as buyer, and Harrington & Marsh, as sellers, as supplemented by agreements dated February 25, 1948 between Natural and Harrington & Marsh, and October 1, 1949, between Natural and Panoma (such agreement as so supplemented being hereinafter referred to as the "Natural Contract") (the Natural Contract was filed with the Federal Power Commission as a part of Gas Rate Schedule No. 2 in Docket No. R-138). The Processing Agreement provides that the leasehold interests shall receive payment from the plant operator for 45% of the liquids attributable to the "owners' gas" processed for a period of five (5) years and thereafter until the weighted average price of gas sold equals 12¢ per Mcf at 14.65 psia and 60 degrees Fahrenheit, at which time the leasehold interests shall be entitled to 40% of such liquids; and the Processing Agreement further provides for payment to the

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leasehold interests for gas utilized for plant fuel and shrinkage.

(c) In connection with the Processing Agreement Harrington et al, by an instrument dated July 1, 1954, made an

assignment to Dorchester of that part of the Natural Contract relating to the operation of the Oklahoma plant and related gathering system. Natural, under date of June 25, 1954, consented to the contemplated transfers by Harrington, et al. Such consent was conditioned upon the execution by Harrington, et al of an instrument of assumption. This instrument was subsequently executed by Harrington et al and Dorchester on July 1, 1954.

(d) Dorchester paid Harrington et al for the two gasoline extraction plants and the related properties and facilities hereinabove referred to $6,500,000, of which $3,500,000 was represented by notes in that aggregate principal amount, issued under a mortgage and deed of trust from Dorchester to Hughes Seewald, Trustee, dated as of July 1, 1954. Of the remainder of the purchase price of $3,000,000—$2,500,000 thereof was borrowed by Dorchester from The Chase National Bank of the City of New York secured by a mortgage and deed of trust from Dorchester to Donald Scott, Jr., Trustee, dated as of July 1, 1954.

(e) Harrington et al sold to Nalam for $37,000,000 approximately 124,956 net leasehold acres in the Guymon-Hugoton Field of Oklahoma and Kansas and the Panhandle Field of Texas, on which were located 204 net producing gas wells. Harrington et al reserved the below-sea-level horizons. The leasehold interests so conveyed included the properties which were subject to the

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Natural Contract. In the conveyance from Harrington et al to Nalam dated July 1, 1954, Harrington et al reserved a deferred production payment of $75,000,000, payable from 80% of the wellhead volume of the gas produced until $10,000,000 was received, and thereafter out of 75% until the production payment was discharged or gas reserves reached 100,000,000,000 cubic feet, at which time the production payment terminated. The production payment commences when the total leasehold proceeds net to the grantors' interest shall have produced $38,000,000 with

interest at 5%. The leasehold proceeds acquired by Nalam under the conveyance included the liquid value payment and plant fuel and shrinkage payment provided for in the Processing Agreement.

(f) Nalam, to finance in part the purchase price, mortgaged the interests which it acquired from Harrington et al to the Metropolitan Life Insurance Company ("Metropolitan") and The Mutual Life Insurance Company of New York ("Mutual") to secure a mortgage of $35,000,000 for a term of fifteen (15) years which provided for interest at the rate of 5% per annum plus 3⅛% simple deferred interest which shall accrue and be payable when the final installment of principal on the loan is due. The matured amount of the deferred 3⅛% interest is subject to a 5% annual penalty interest. Such mortgage is known as the Deed of Trust, Mortgage and Assignment by Nalam to First National Bank in Dallas, Texas, dated July 1, 1954.

(g) Pursuant to the terms and provisions of an agreement between Metropolitan, Mutual, Nalam and Dorchester dated July 1,

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1954, Nalam conveyed to Dorchester by conveyance dated July 1, 1954, the interests which it acquired from Harrington et al, subject to the mortgage which it had delivered as security for the loans from Metropolitan and Mutual and subject to the reservation of the following Production Payment:

(i) From 96½% of production the sum of $434,250;

(ii) From 96% of the production, after $434,250 has been received, the sum of $35,000,000, plus 5% interest;

(iii) From 10% of the production for five (5) years, commencing with the discharge of the $35,000,000 plus 5% interest; from 13% of production for the following ten (10) years; from 14% of production for the next ten (10) years; and from 19% of production

thereafter the amount of the deferred matured interest plus 5% interest, plus the sum of $100,000;

(iv) From ½ of 1% of the production commencing with the date that the $434,250 has been received and continuing until the $35,000,000 plus 5% interest is discharged, and thereafter from 86½% of the production the sum of $250,000 plus 5% interest.

Dorchester paid Nalam $2,000,000 for the interest conveyed to it which, coupled with the $35,000,000 which Nalam borrowed from Metropolitan and Mutual, permitted Nalam to pay $37,000,000 to Harrington et al.

(h) Pursuant to the provisions of an agreement between Metropolitan, Mutual, Nalam, Cortez and Dorchester dated July 1, 1954, Nalam conveyed to Cortez, by conveyance dated July 1, 1954, the production payment which Nalam had reserved in the conveyance from Nalam to Dorchester in consideration of the payment by Cortez to Nalam of the sum of $25,000 plus the assumption by Cortez of Nalam's obligation to Metropolitan and Mutual.

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(i) Dorchester entered into the transaction with $3,100,000, of which $500,000 was represented by the consideration paid by Oil and Gas Property Management, Inc. ("Oil and Gas") for its common stock, and the remaining $2,600,000 represented moneys loaned to Dorchester by Oil and Gas. Such $3,100,000 was applied as follows:

(1) $2,000,000 paid to Nalam as hereinabove described;

(2) $500,000 paid to Harrington et al in connection with the purchase of the gasoline extraction plants, related properties and facilities;

(3) $500,000 working capital for Dorchester;

(4) $100,000 for fees and expenses of Dorchester in connection with the transaction.

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**(Exhibit 13)**

# INSTRUMENT OF ASSUMPTION

Dated July 1, 1954

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, Panoma Corporation, a Delaware corporation, succeeded by mesne assignments to the interests of Harrington and Marsh under that certain Gas Purchase Contract (herein called the Gas Purchase Contract) between Natural Gas Pipeline Company of America (herein called Natural) and Harrington and Marsh, dated as of December 1, 1946, with respect to the purchase and sale of specified quantities of natural gas produced from certain lands in Texas County, Oklahoma; and

WHEREAS, on the date hereof Panoma Corporation was dissolved and its assets remaining after provision for its liabilities, including the Gas Purchase Contract, were distributed in liquidation to the following persons (herein called the Distributees) in the following proportions:

| | |
|---|---|
| D. D. Harrington | 43,750/100,000ths |
| Stanley Marsh, Jr. | 31,016/100,000ths |
| Estelle Fariss Marsh | 2,734/100,000ths |
| Isabel Marsh McCormick | 10,000/100,000ths |
| T. J. Wagner, Jr. | 12,500/100,000ths |

and

WHEREAS, the Distributees have assigned and sold to Dorchester Corporation (herein called Dorchester) all of their interests in the plants, pipeline gathering system and other facilities referred to in the Gas Purchase Contract (herein collectively called the Plants) and to provide in part for payment of the purchase price Dorchester has subjected the Plants to a Mort-

gage and Deed of Trust to Donald Scott, Jr., Trustee, and to a Mortgage and Deed of Trust to Hughes Seewald, Trustee; and

WHEREAS, such sale to Dorchester was made subject to a Processing Agreement which requires Dorchester to operate the Plants in accordance with the provisions of the Gas Purchase Contract and Dorchester has agreed with the Distributees that it will faithfully perform and carry out all of the obligations imposed upon them by the Gas Purchase Contract which relate to the operation of the Plants; and

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WHEREAS, the Distributees have assigned to Nalam Corporation, a Delaware corporation, all of their interests in the Gas Reserves referred to in the Gas Purchase Contract insofar as said interests cover producing horizons situated in whole or in part above sea level reserving, however, in addition to their interests in horizons below sea level a deferred production payment; and

WHEREAS, the assignment referred to in the preceding recital also includes the rights of the Distributees under applicable contracts insofar as they relate to the interests assigned, said leasehold interests and contract rights so assigned being herein called the Assigned Leasehold Interests, and the interests in the Gas Reserves and the contract rights relating thereto retained by the Distributees being herein called the Retained Leasehold Interests; and

WHEREAS, Nalam Corporation subjected the Assigned Leasehold Interests to a Mortgage and Deed of Trust to First National Bank in Dallas, as Trustee, to secure loans to it from Metropolitan Life Insurance Company and The Mutual Life Insurance Company of New York and, subject to said Mortgage and Deed of Trust, has assigned to Dorchester all of the

Assigned Leasehold Interests by an instrument of assignment in which it has reserved a production payment which has in turn been assigned to Cortez Oil Corporation; and

WHEREAS, Natural has consented to the assignments and Mortgages and Deeds of Trust hereinabove referred to in consideration of the execution and delivery of this instrument of assumption.

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained and in consideration of Ten Dollars ($10.00) in hand paid by Natural to each of the undersigned, and by each of the undersigned to the other, the undersigned hereby agree with Natural and with each other as follows:

1. Each of the Distributees agrees that as the owner of the respective portions specified above of the Retained Leasehold Interests such Distributee shall be bound by the Gas Purchase Contract insofar as the Gas Purchase Contract relates to the Retained Leasehold Interests owned by such Distributee and that such Distributee will fully and faithfully perform and carry out the obligations imposed by the Gas Purchase Contract upon such Distributee as the owner of such Retained Leasehold Interests.

2. Dorchester agrees that as the owner of the Plants and of the Assigned Leasehold Interests it shall be bound by the Gas Purchase Contract insofar as the Gas Purchase Contract relates to the Plants and the Assigned Leasehold Interests and that it will fully and faithfully perform and carry out the obligations imposed by the Gas Purchase Contract upon the owner of the Plants and the Assigned Leasehold Interests.

3. This instrument of assumption shall be effective as of 10:00 o'clock A. M. C. S. T. on July 1, 1954 and shall relate to all obligations accruing from and after such time and date but not before.

4. This instrument shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assigns of each of the Distributees and shall be binding upon and inure to the benefit of the respective successors and assigns of Dorchester and of Natural.

IN WITNESS WHEREOF, the undersigned have executed this instrument all as of 10:00 o'clock A. M. C. S. T. on July 1, 1954.

D. D. HARRINGTON
(D. D. HARRINGTON)

STANLEY MARSH, JR.
(STANLEY MARSH, JR.)

ESTELLE FARISS MARSH
(ESTELLE FARISS MARSH)

ISABEL MARSH McCORMICK
(ISABEL MARSH McCORMICK

T. J. WAGNER, JR.
(T. J. WAGNER, JR.)

DORCHESTER CORPORATION

By: JOHN A. CRICHTON
*President.*

[Seal]

Attest:

JAMES J. FLANAGAN
*Secretary.*

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**(Exhibit 14)**

June 25, 1954

Natural Gas Pipeline Company of America
20 North Wacker Drive
Chicago (6), Illinois

Attn.: Mr. J. J. Hedrick
President and General Manager

*Gentlemen:*

Reference is made to the Gas Purchase Contract between Natural Gas Pipeline Company of America (Natural) and Harrington and Marsh (Sellers), dated as of December 1, 1946 (herein called the Gas Purchase Contract), relating to the purchase and sale of specified quantities of natural gas produced from certain lands in Texas County, Oklahoma.

The undersigned and the other stockholders of Panoma Corporation, which has succeeded Harrington and Marsh as a party to the Gas Purchase Contract, propose to cause the dissolution and liquidation of said corporation and upon such liquidation undivided interests will be assigned to the stockholders in the properties to which the Gas Purchase Contract relates in the same proportions as their ownership of the stock of Panoma Corporation.

Such owners propose thereafter to assign to Dorchester Corporation all of their interests in the plants, pipeline gathering system and other facilities referred to in the Gas Purchase Contract subject to a Processing Agreement requiring the purchaser to operate said plants and the other properties in accordance with the provisions of the Gas Purchase Contract. To provide for the payment in part of the purchase price Dorchester Corporation will execute and deliver Mortgages and Deeds of Trust to Donald Scott, Jr., as Trustee, and to Hughes Seewald, as Trustee.

Such owners also propose thereafter to assign to Nalam Corporation their interests in the Gas reserves referred to in the Gas Purchase Contract insofar as said interests cover producing horizons situated in whole or in part above sea level, reserving, however, in addition to their interests in horizons below sea level a deferred production payment. Such assignment will also include the rights of such owners under applicable contracts insofar as they relate to the interests assigned. The leasehold interests and contract rights so assigned are herein called the Oklahoma Properties. The instrument of assignment will also include other interests and rights, which together with the Oklahoma Properties, are herein called the Properties.

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The undersigned is informed by Nalam Corporation that it proposes (a) to assign the Properties under a Mortgage and Deed of Trust to First National Bank in Dallas, as Trustee, as security for loans from Metropolitan Life Insurance Company and The Mutual Life Insurance Company of New York, (b) to sell the Properties (subject to said Mortgage and Deed of Trust) to Dorchester Corporation reserving a production payment, and (c) to sell said production payment (subject to said Mortgage and Deed of Trust) to Cortez Oil Corporation.

You have been furnished with proofs of the proposed assignments, Mortgages and Deeds of Trust and Processing Agreement above referred to. It is proposed that at the time such instruments are delivered in final form conformed copies of each of such instruments will be mailed to you and that there will also be mailed to you a duly executed instrument of assumption in the form annexed hereto as Exhibit A. It is presently contemplated that all such instruments will be delivered on July 1, 1954 but that such delivery date may possibly be deferred, in which case all of such instruments, including the instrument of assumption, will be dated as of the date of delivery and be made effective as of 10:00 o'clock A.M. C.S.T. on such date.

By signing the confirmation at the foot of this letter, Natural conforms to D. D. Harrington and to the other stockholders who will become the distributees of Panoma Corporation, to Dorchester Corporation, to Nalam Corporation and each of its assigns referred to above, that, subject to the execution and delivery of said instrument of assumption, Natural consents to each of the assignments of the rights and benefits of the Sellers and/or their successors in interest under the Gas Purchase Contract, upon the conditions (i) that such assignments and the assumption of the assignees thereunder shall not impair the continuing obligation to Natural of the Sellers, as defined in the Gas Purchase Contract, for the full and complete performance of the Gas Purchase Contract or waive the liability, if any, of the Sellers and/or their successors in interest for past failure of performance thereunder, and (ii) that the transactions described above are consummated by September 1, 1954; and further provided that the instruments of assignment and the other substantive instruments of the transaction are substantially in the respective forms of the proofs provided to

Natural, as identified by the initials of representatives of Natural and the Sellers.

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This consent is executed (i) upon the condition that it shall not be construed as a concurrence by Natural in any assumptions of fact which may underlie the execution of said assignments or of any or all of the other substantive instruments involved in the transaction, and (ii) without prejudice to Natural's right to take any position or assert any right which Natural might have taken or asserted prior to the execution of this consent which does not limit the effect of the consent to the extent it is required. No approval of any of the substantive instruments concerned in this transaction or the recitals therein shall be implied from this consent, except to the extent that consent is required under Section 3 of Article Eighteenth of the Gas Purchase Contract to permit the consummation of the proposed transaction.

Natural hereby waives its option to purchase granted under Article Seventeenth of the Gas Purchase Contract with respect to each of the transactions referred to above, provided that the transactions described above are consummated by September 1, 1954. It is expressly stipulated, moreover, that such confirmation by Natural shall not impair any rights which Natural may have against any person, firm or corporation to recover the difference between the contract price and the price actually paid by Natural by reason of minimum price orders for gas delivered under the Gas Purchase contract by such persons, firm or corporation.

As the consent of Natural is not required for the pledging of all or any portion of the Sellers' property covered by the Gas Purchase Contract as security under any Mortgage, Deed of Trust or other similar lien, or for aging the Gas Purchase

Contract or any benefits accruing thereunder to the party making the pledge, Natural has not consented thereto, though if each such pledge, Mortgage, Deed of Trust or similar lien were not made subject to the terms of the Gas Purchase Contract, such consent would, in the opinion of Natural, be necessary.

Very truly yours,

/s/ D. D. HARRINGTON
(D. D. Harrington)

Confirmed: June 28, 1954.

NATURAL GAS PIPELINE COMPANY OF AMERICA

By: /s/ J. J. Hedrick
President.

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**(Exhibit 15)**

**PEAT, MARWICK, MITCHELL & CO.**

CERTIFIED PUBLIC ACCOUNTANTS
REPUBLIC NATIONAL BANK BUILDING
DALLAS 1, TEXAS

NEW YORK
ATLANTA
BALTIMORE
BILLINGS
BOSTON
BUFFALO
CHARLOTTE
CHICAGO
CINCINNATI
CLEVELAND
COLUMBUS
DALLAS
DENVER
DETROIT
GREENSBORO
HOUSTON
INDIANAPOLIS
KANSAS CITY
LINCOLN
LOS ANGELES
MEMPHIS
MILWAUKEE
MINNEAPOLIS
NEWARK
NEW ORLEANS
OKLAHOMA CITY
OMAHA
PHILADELPHIA
PITTSBURGH
PORTLAND
ST. LOUIS
SAN FRANCISCO
SAN JOSE
SEATTLE
SHREVEPORT
TERRE HAUTE
TULSA
WASHINGTON
WATERBURY

AFRICA
AUSTRALIA
CANADA
CONTINENTAL EUROPE
CUBA
GREAT BRITAIN
HONG KONG
INDIA
JAPAN
MEXICO
SOUTH AMERICA

## ACCOUNTANTS' REPORT

The Board of Directors
Dorchester Corporation:

We have examined the balance sheet of Dorchester Corporation as of December 31, 1954 and the related statement of income and deficit for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and statement of income and deficit present fairly the financial position of Dorchester Corporation at December 31, 1954 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Dallas, Texas
March 10, 1955

PEAT, MARWICK, MITCHELL & CO.

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# DORCHESTER CORPORATION

## Balance Sheet

## December 31, 1954

### Assets

| | | |
|---|---|---|
| Current assets: | | |
| Cash | | $ 372,345 72 |
| Accounts receivable | | 516,005 28 |
| Inventories: | | |
| Gasoline plant products—at market | $ 214,296 80 | |
| Materials and supplies—at average cost | 51,355 10 | 265,651 90 |
| Prepaid expenses | | 34,049 78 |
| Total current assets | | 1,188,052 68 |
| Property, plant and equipment, at cost (note 1): | | |
| Producing oil and gas properties: | | |
| Leasehold cost | 396,771 22 | |
| Equipment | 1,635,674 72 | |
| | 2,032,445 94 | |
| Gasoline plants and gas systems | 5,889,198 56 | |
| Railway tank cars | 661,500 00 | |
| Automotive equipment | 31,477 50 | |
| Office equipment | 20,002 50 | |
| | 8,634,624 50 | |
| Less depletion and depreciation | 271,322 58 | 8,363,301 92 |
| Organization expenses | | 364 41 |
| | | $9,551,719 01 |

See accompanying notes to financial statements.

# DORCHESTER CORPORATION

## Balance Sheet

## December 31, 1954

### Liabilities

| | | |
|---|---|---|
| Current liabilities: | | |
| Notes payable—banks, current installments | | $ 500,000 00 |
| Accounts payable | | 443,468 80 |
| Royalties payable | | 190,246 17 |
| Accrued interest payable | | 64,999 98 |
| Accrued payroll, insurance and taxes | | 17,158 70 |
| Total current liabilities | | 1,215,873 65 |
| Long-term debt: | | |
| 5% note, due to bank in quarterly installments, secured by mortgage on gasoline plants and equipment | $2,250,000 00 | |
| Less current installments | 500,000 00 | 1,750,000 00 |
| 5% notes due to Harrington, et al, secured by mortgage on gasoline plants and equipment of Dorchester Corporation, subordinate to the 5% note to bank in the amount of $2,250,000 | | 3,500,000 00 |
| 5% note due to Oil and Gas Property Management, Inc.; subordinate to, with the exception of $500,000 thereof under certain circumstances, the 5% notes due to Harrington, et al | | 2,600,000 00 |
| Stockholders' equity (note 2): | | |
| Capital: | | |
| Common stock of $1.00 par value per share: | | |
| Authorized and issued 1,000 shares | 1,000 00 | |
| Contribution to capital by parent | 499,000 00 | |
| | 500,000 00 | |
| Deficit from operations | 14,154 64 | 485,845 36 |
| Contingencies (notes 1 and 2) | | |
| | | $9,551,719 01 |

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## DORCHESTER CORPORATION

### Statement of Income and Deficit

### For year ended December 31, 1954

| | | |
|---|---|---|
| Gross income: | | |
| Income from oil and gas sales | | $ 61,896.31 |
| Income from sale of plant products | | 1,645,821.60 |
| Other income | | 23,684.85 |
| | | 1,731,402.76 |
| Costs and expenses: | | |
| Lease operating and gathering line expenses | $ 61,053.92 | |
| Plant operating expenses | 480,219.59 | |
| Product purchases | 587,919.88 | |
| General, administrative and selling expenses | 70,208.17 | |
| Taxes, other than taxes on income | 60,614.12 | |
| Lease rentals and minimum royalties | 781.64 | |
| Depletion | 9,912.28 | |
| Depreciation | 261,410.30 | 1,532,119.90 |
| Income from operations | | 199,282.86 |
| Interest expense: | | |
| Interest on note to bank | 60,937.50 | |
| Interest on notes to Harrington, et al | 87,500.00 | |
| Interest on note to Oil and Gas Property Management, Inc. | 65,000.00 | 213,437.50 |
| Loss for year and deficit at December 31, 1954 | | $ 14,154.64 |

See accompanying notes to financial statements.

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# DORCHESTER CORPORATION

## Notes to Financial Statements

(1) Depletion and depreciation of gas-producing properties, plants, and other items of equipment are being provided on the basis of straight-line rates applied to the cost of the respective classes of properties after making appropriate allowances for salvage value of plant and equipment.

During the year 1954, Dorchester Corporation acquired substantial gas-producing properties located in Texas and Oklahoma. The properties were acquired subject to a deferred production payment of $75,000,000.00 and a primary production payment of $35,000,000.00, plus an amount equivalent to 5% per annum on the latter. The primary production payment was pledged by the seller under a deed of trust as security for 5% loans, maturing in 15 years, aggregating $35,000,000.00, plus a 3⅛% deferred interest provision. Notwithstanding that the above-mentioned production payments are payable from specified percentages of the production reserved from the properties and that the production payments and the properties are subject to the terms of a "Processing Agreement" covering the rights and obligations of the leasehold interests in connection with the extraction of liquids from the gas available for processing, the gas producing properties were acquired subject to the above-mentioned loans aggregating $35,000,000.00, including their interest provisions, which loans are not included as liabilities in the accompanying financial statements.

(2) The operations of Dorchester Corporation reflect certain residue gas sales, plant fuel and shrinkage costs and royalty payments at 9.8262¢ per Mcf at 14.64 psia, being the rate set forth in an order of the Corporation Commission of Oklahoma, the validity of which is presently the subject of an appeal before the Supreme Court of the United States, as against the contract price of 7¢ per Mcf at 16.4 psia. Dorchester's percentage of ownership of the residue gas and of the proceeds therefrom is 3½%. It is difficult to determine what adverse effect upon the operations of Dorchester, for the period ended December 31, 1954, may follow if the United States Supreme Court should ultimately hold that the Order of the Corporation Commission of Oklahoma is invalid.

So long as any of the 5% notes due to Harrington, et al shall be outstanding, the Company may not pay or declare any dividends other than stock dividends.

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**(Exhibit 16)**

**VINSON, ELKINS, WEEMS & SEARLS**

Attorneys at Law
Esperson Building
Houston, Texas

RECEIVED

October 27, 1954

OCT 28 3 59 PM '54
FEDERAL POWER COMMISSION

Mr. Leon M. Fuquay
Federal Power Commission
Washington, D. C.

Dear Mr. Fuquay:

We enclose herewith for filing two copies of Dorchester Corporation's Rate Schedule, in connection with the sale of gas by Dorchester Corporation to Natural Gas Pipeline Company of America, under the terms and conditions of a gas purchase contract between Dorchester Corporation and Natural Gas Pipeline Company of America, dated December 1, 1946, as amended and supplemented by amendment dated October 1, 1949, letter dated February 25, 1948 and Oklahoma Corporation Commission Order No. 26096. We request that the enclosures be filed pursuant to Section 154.92(a) of Federal Power Commission Order No. 174-A.

Copies of the aforementioned Rate Schedule have been served upon the purchaser, Natural Gas Pipeline Company of

America, and the Oklahoma Corporation Commission by registered mail.

An application for a certificate of public convenience and necessity with respect to the aforementioned sale will be filed by Dorchester Corporation prior to December 1, 1954, in accordance with Federal Power Commission Order No. 174-A, as amended.

Kindly acknowledge the receipt and filing of the enclosures above mentioned, on the duplicate copy of this

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letter and return the same to us. We enclose herewith for your convenience a stamped self-addressed envelope.

Yours very truly,

VINSON, ELKINS, WEEMS & SEARLS

By s/ David T. Searls
David T. Searls

31:173a

Enclosures

cc: Natural Gas Pipeline Company of America
Amarillo, Texas

cc: Oklahoma Corporation Commission

*Exhibit No. 16*

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**SELLER:**

DORCHESTER CORPORATION

PURCHASER: NATURAL GAS PIPELINE COMPANY OF AMERICA

**FIELD:**

HUGOTON

COUNTY AND STATE: TEXAS COUNTY, OKLAHOMA

## GAS RATE SCHEDULE NO. 1

DORCHESTER CORPORATION, a Delaware corporation, Seller, while denying that it is a natural gas company under the Natural Gas Act and subject to the jurisdiction of the Federal Power Commission with respect to the subject contract, in accordance with Section 154.92(a) of Subchapter E of the Commission's Regulations under the Natural Gas Act, files herewith the attached Gas Purchase Contract dated as of December 1, 1946, as amended and supplemented by Amendment dated October 1, 1949, letter dated February 25, 1948, and Oklahoma Corporation Commission Order No. 26096, setting forth the terms and conditions of service and all rates and charges for such sale effective on June 7, 1954, which said Gas Purchase Contract, as so amended and supplemented, is hereinafter called the "subject contract."

This filing is made subject to the Motion for Rehearing heretofore filed by Seller with the Federal Power Commission in Docket No. R-138 and without waiver

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thereof, and is made solely because of the requirements of Order No. 174-A but without admission of the validity thereof, and Seller denies that it is subject to the jurisdiction of the Commission under the Natural Gas Act and reserves any and all legal rights that it might have and the right to pursue such remedies as the law gives it, and makes this filing pursuant to said Order No. 174-A under protest and duress to avoid the assertion against it of the penalties as contained in Section 21 of the Natural Gas Act.

On June 7, 1954, Panoma Corporation was the owner of the properties from which gas was being produced and sold under the subject contract and had succeeded to all rights and interests of Harrington & Marsh under said contract. On said date of June 7, 1954, the price being paid by the purchaser, Natural Gas Pipeline Company of America, for gas under the subject contract was 9.8262¢ per MCF at a pressure base of 14.65 psia. On July 1, 1954, Seller acquired all of said properties from Panoma Corporation and succeeded to all of its rights under the subject contract.

Under the provisions of Order No. 174-A issued by the Federal Power Commission in Docket No. R-138, the rates and charges for the sale of natural gas effective

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on June 7, 1954, became the price to be set forth in the initial rate filing to be made pursuant to said Order. Accordingly, said price of 9.8262¢ per MCF is the price or rate for natural gas set forth in this Rate Schedule, which is an initial filing, and is the price to be charged for natural gas delivered hereunder on and after June 7, 1954.

There is shown on Table I attached hereto actual billing for a recent month in such form as to show how the billing was determined. The volume indicated is the gross volume representing the interest of royalty owners, overriding royalty owners, and other such interests and does not represent the net interest of Seller.

Communications with respect hereto should be sent to:

J. A. Crichton, President
Dorchester Corporation
602 Fidelity Union Life Building
Dallas, Texas

David T. Searls
Vinson, Elkins, Weems & Searls
11th Floor Esperson Building
Houston 2, Texas

DORCHESTER CORPORATION

By s/ David T. Searls
David T. Searls

Attorney for DORCHESTER CORPORATION

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THE STATE OF TEXAS)
COUNTY OF HARRIS )

BEFORE ME, the undersigned authority, on this day personally appeared David T. Searls, who being by me first duly sworn, on oath deposes and says:

That he is Attorney for DORCHESTER CORPORATION; that as such he has signed the foregoing Rate Schedule for and on behalf of Dorchester Corporation; that he is authorized to do so; that he has read the foregoing statement, including Table I attached thereto, and is familiar with the contents thereof and that the facts and allegations contained therein are true and correct to the best of his knowledge and belief.

s/ David T. Searls
David T. Searls

SUBSCRIBED AND SWORN TO before me this the 27th day of October, 1954.

s/ Rosamond Hillebrandt
Notary Public in and for Harris County, Texas

(SEAL)

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GA-7A.

## TABLE 1

Contract No. _____ Date July 31, 1954

## NATURAL GAS PIPELINE COMPANY OF AMERICA

**Amarillo, Texas**

Dorchester Corporation
701 First National Bank Building
Amarillo, Texas

Invoice No. _____

| | We Credit | | You | |
|---|---|---|---|---|
| For Gas Delivered through Hooker Station | | | Motor No. | 430 A & B |
| In Section: | | | | |
| County: | | State: | Oklahoma | as follows: |
| 1,404,135 | M. Cubic Ft. of Gas @ | .098262 | | |
| | | | per M. $ | 137,973.11 |
| | M. Cubic Ft. of Gas @ | | per M. $ | |
| | M. Cubic Ft. of Gas @ | | per M. $ | |
| | M. Cubic Ft. of Gas @ | | per M. $ | |
| | Totals | | | |

| | |
|---|---|
| Total Volume | 1,463,791 |
| Fuel | 28,453 |
| | 1,492,244 |
| Total Volume | 1,492,244 |
| Supplemental | 88,109 |
| | 1,404,135 |

**M. CUBIC FEET ON**

| Date | BTU | 14.65 MCF | Base Units |
|---|---|---|---|
| 1 | 967 | 68,532 | 66,270 |
| 2 | 968 | 75,127 | 72,723 |
| 3 | 970 | 71,564 | 69,417 |
| 4 | 970 | 69,799 | 67,705 |
| 5 | 972 | 70,702 | 68,722 |
| 6 | 972 | 70,584 | 68,608 |
| 7 | 37 | 71,412 | 69,341 |
| 8 | 975 | 71,864 | 70,067 |
| 9 | 975 | 72,302 | 70,494 |
| 10 | 973 | 71,701 | 69,765 |
| 11 | 974 | 69,120 | 67,323 |
| 12 | 972 | 66,582 | 64,718 |
| 13 | 971 | 66,757 | 64,821 |
| 14 | 971 | 65,563 | 63,662 |
| 15 | 965 | 66,112 | 63,798 |
| 16 | 963 | 62,915 | 60,587 |
| 17 | 962 | 61,153 | 58,829 |
| 18 | 965 | 62,172 | 59,996 |
| 19 | 964 | 59,088 | 56,961 |
| 20 | 964 | 58,083 | 55,992 |
| 21 | 962 | 56,624 | 54,472 |
| 22 | 962 | 56,035 | 53,906 |
| 23 | | | |
| 24 | | | |
| 25 | | | |
| 26 | | | |
| 27 | | | |
| 28 | | | |
| 29 | | | |
| 30 | | | |
| 31 | | | |
| Total | | 1,463,791 | 1,418,177 |

By W. H. RICHMAN
Gas Accounting Dept.

[766]

GA-7A.

Contract No._____ Date July 31, 1954

## NATURAL GAS PIPELINE COMPANY OF AMERICA

**Amarillo, Texas**

Dorchester Corporation Fuel
701 First National Bank Building
Amarillo, Texas

Invoice No._____

**We** **You**

For Gas Delivered through Motor No. 431 A & B

In Section:

County: State: as follows:

M. Cubic Ft. of Gas @ per M. $

M. Cubic Ft. of Gas @ per M. $

M. Cubic Ft. of Gas @ per M. $

M. Cubic Ft. of Gas @ per M. $

Totals

| Date | M. CUBIC FEET ON Base 14.65 |
|---|---|
| 1 | 725 |
| 2 | 1,258 |
| 3 | 1,255 |
| 4 | 1,216 |
| 5 | 1,212 |
| 6 | 1,211 |
| 7 | 1,206 |
| 8 | 1,148 |
| 9 | 1,135 |
| 10 | 1,271 |
| 11 | 1,464 |
| 12 | 1,457 |
| 13 | 1,413 |
| 14 | 1,380 |
| 15 | 1,410 |
| 16 | 1,468 |
| 17 | 1,460 |
| 18 | 1,372 |
| 19 | 1,400 |
| 20 | 1,384 |
| 21 | 1,308 |
| 22 | 1,300 |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |
| 29 | |
| 30 | |
| 31 | |
| TOTAL | 28,453 |

Purchase for engine fuel at our plant at Hooker, Oklahoma. They may deliver either wet or dry gas for fuel. We indicate whether it is wet or dry gas.

Dry Gas

By W. H. Richman
Gas Accounting Dept.

*Exhibit No. 16*

[767]

GA-7A.

Contract No. _____ Date June 30, 1954

## NATURAL GAS PIPELINE COMPANY OF AMERICA

Amarillo, Texas

Panoma Corporation
701 First National Bank Building
Amarillo, Texas

Invoice No. _____

We Credit You

For Gas Delivered through Motor No.
Hooker Station 430 C. D. & E.

In Section:

County: State:

| | | | | |
|---|---|---|---|---|
| 2,087,560 | M. Cubic Ft. of Gas @ | .098262 | as follows: | 205,127.82 |
| | M. Cubic Ft. of Gas @ | | per M. 8 | |
| | M. Cubic Ft. of Gas @ | | per M. 8 | |
| | M. Cubic Ft. of Gas @ | | per M. 8 | |
| | Totals | | per M. 8 | |

| | |
|---|---|
| Total Volume | 2,769,618 |
| Fuel | 46,449 |
| | 2,816,067 |
| Total Volume | 2,816,067 |
| Supplemental | 728,507 |
| | 2,087,560 |

| Date | BTU | M. CUBIC FEET ON 14.65 MCF | Base Units |
|---|---|---|---|
| June 1 | 973 | 90,265 | 87,828 |
| 2 | 978 | 90,852 | 87,945 |
| 3 | 965 | 87,965 | 84,884 |
| 4 | 964 | 88,087 | 84,916 |
| 5 | 965 | 89,950 | 86,802 |
| 6 | 968 | 90,276 | 87,387 |
| 7 | 977 | 90,312 | 88,235 |
| 8 | 977 | 89,371 | 87,315 |
| 9 | 975 | 88,362 | 86,153 |
| 10 | 978 | 89,360 | 87,394 |
| 11 | 977 | 88,841 | 86,798 |
| 12 | 978 | 88,569 | 86,620 |
| 13 | 978 | 88,128 | 86,189 |
| 14 | 884 | 91,449 | 89,986 |
| 15 | 935 | 90,014 | 88,664 |
| 16 | 986 | 89,982 | 88,452 |
| 17 | 979 | 89,127 | 87,255 |
| 18 | 979 | 88,058 | 86,209 |
| 19 | 977 | 86,984 | 84,864 |
| 20 | 976 | 87,304 | 85,209 |
| 21 | 989 | 90,198 | 88,394 |
| 22 | 985 | 90,090 | 88,558 |
| 23 | 971 | 88,647 | 86,076 |
| May 24 | 975 | 88,522 | 88,309 |
| 25 | 966 | 90,680 | 89,410 |
| 26 | 967 | 90,811 | 89,630 |
| 27 | 982 | 89,401 | 87,792 |
| 28 | 974 | 88,195 | 85,902 |
| 29 | 976 | 88,373 | 86,252 |
| 30 | 979 | 91,089 | 89,176 |
| 31 | 982 | 90,378 | 88,751 |
| Total | | 2,769,618 | 2,705,455 |

By W. H. Richman
Gas Accounting Dept.

GA-7A

Contract No. _____ Date June 30, 1954

# NATURAL GAS PIPELINE COMPANY OF AMERICA

**Amarillo, Texas**

The Panoma Corporation
701 First National Bank Building
Amarillo, Texas

Invoice No. _____

**We** **You**

For Gas Delivered through Motor No. 431 A & B

In Section:

County: State: as follows:

| | | |
|---|---|---|
| M. Cubic Ft. of Gas @ | per M. | $ |
| M. Cubic Ft. of Gas @ | per M. | $ |
| M. Cubic Ft. of Gas @ | per M. | $ |
| M. Cubic Ft. of Gas @ | per M. | $ |
| Totals | | |

Purchase for engine fuel at our plant at Hooker, Oklahoma. They may deliver either wet or dry gas for fuel. We indicate whether it is wet or dry gas.

Dry Gas

| Date | M. CUBIC FEET ON Base 14.65 |
|---|---|
| 1 | 1,492 |
| 2 | 1,504 |
| 3 | 1,441 |
| 4 | 1,487 |
| 5 | 1,563 |
| 6 | 1,513 |
| 7 | 1,483 |
| 8 | 1,499 |
| 9 | 1,510 |
| 10 | 1,504 |
| 11 | 1,502 |
| 12 | 1,500 |
| 13 | 1,507 |
| 14 | 1,558 |
| 15 | 1,548 |
| 16 | 1,561 |
| 17 | 1,557 |
| 18 | 1,536 |
| 19 | 1,531 |
| 20 | 1,514 |
| 21 | 1,540 |
| 22 | 1,564 |
| 23 | 1,473 |
| 24 | 1,450 |
| 25 | 1,448 |
| 26 | 1,466 |
| 27 | 1,464 |
| 28 | 1,449 |
| 29 | 1,430 |
| 30 | 1,421 |
| 31 | 1,434 |
| TOTAL | 46,449 |

By W. H. Richman
Gas Accounting Dept.

*Exhibit No. 16*



GA-7A.
Contract No. _____ Date July 31, 1954

# NATURAL GAS PIPELINE COMPANY OF AMERICA

**Amarillo, Texas**

Panoma Corporation
701 First National Bank Building
Amarillo, Texas

Invoice No. _____

| We | Credit | You | | M. CUBIC FEET ON 14.65 | Base |
|---|---|---|---|---|---|
| | | | Date BTU | MCF | Units |
| For Gas Delivered through | | Motor No. | 1 | | |
| | Hooker Station | 430 C, D, & E | 2 | | |
| In Section: | | | 3 | | |
| | | | 4 | | |
| County: | State: | as follows: | 5 | | |
| | | | 6 | | |
| 557,743 M. Cubic Ft. of Gas @ | .098262 | 54,804.94 | 7 | | |
| | | per M. $ | 8 | | |
| M. Cubic Ft. of Gas @ | | per M. $ | 9 | | |
| | | | 10 | | |
| M. Cubic Ft. of Gas @ | | per M. $ | 11 | | |
| | | | 12 | | |
| M. Cubic Ft. of Gas @ | | per M. $ | 13 | | |
| | | | 14 | | |
| Totals | | | 15 | | |
| | | | 16 | | |
| | | | 17 | | |
| | | | 18 | | |
| | | | 19 | | |
| | | | 20 | | |
| | | | 21 | | |
| | | | 22 | | |
| | | | 23 | | |
| | | | July 24 980 | 86,651 | 84,918 |
| | | | 25 976 | 74,564 | 72,774 |
| | | | 26 973 | 72,879 | 70,911 |
| | | | 27 973 | 73,684 | 71,695 |
| | | | 28 979 | 73,797 | 72,247 |
| | | | 29 978 | 73,753 | 72,130 |
| | | | 30 976 | 72,211 | 70,478 |
| | | | 31 968 | 73,728 | 71,369 |
| | | | 967 | 6,241 | 6,035 |
| | | | Total | 607,508 | 592,557 |

| | |
|---|---|
| Total Volume | 607,508 |
| | 11,021 |
| Fuel | 618,529 |
| Total Volume | 618,529 |
| Supplemental | 60,786 |
| | 557,743 |

By W. H. Richman
Gas Accounting Dept.

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**(Hearings, October 11–13, Exhibit 1)**

Federal Power Commission Docket No. G-6505
In the Matter of Dorchester Corporation
Exhibit No.

## MEMORANDUM

Re: Acquisition by Dorchester of Panoma Corporation Properties

Basically the transaction involved:

1. The dissolution of Panoma Corporation ("Panoma") and the distribution of its properties to the stockholders ("Harrington, et al");

2. The sale by Harrington et al to Dorchester Corporation ("Dorchester") of two gasoline extraction plants (one in Oklahoma and the other in Texas), a field gathering system in Oklahoma, petroleum products, tank cars, automotive equipment and other related facilities;

3. The execution of an agreement between Harrington et al, as the owners of the leasehold interest, and Dorchester, as the owner of the gasoline extraction plants for the processing of gas ("Processing Agreement");

4. The conveyance by D. D. Harrington et al to Nalam Corporation ("Nalam") of their above-sea-level interests in certain properties in the Guymon-Hugoton Field in Oklahoma and Kansas and the Panhandle Field in Texas;

5. The conveyance by Nalam to Dorchester of the properties acquired by Nalam from Harrington et al subject to the reservation of a primary gas production payment; and

6. The conveyance by Nalam to Cortez Oil Corporation ("Cortez") of the reserved primary gas production payment.

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A more detailed account of the transaction, particularly with respect to the Oklahoma properties, is as follows:

(a) D. D. Harrington et al conveyed to Dorchester by a conveyance dated July 1, 1954, the gasoline extraction plants and other properties and facilities referred to in the preceding paragraph, including the gasoline extraction plant located in Hooker, Oklahoma;

(b) The Processing Agreement referred to in the preceding paragraph was dated July 1, 1954 and related among other things to the processing in the Oklahoma plant of the natural gas which was subject to the gas purchase contract dated December 1, 1946, between Natural Gas Pipeline Company of America ("Natural") as buyer, and Harrington & Marsh, as sellers, as supplemented by agreements dated February 25, 1948 between Natural and Harrington & Marsh, and October 1, 1949, between Natural and Panoma (such agreement as so supplemented being hereinafter referred to as the "Natural Contract") (the Natural Contract was filed with the Federal Power Commission as Gas Rate Schedule No. 2 in Docket No. R-138). The Processing Agreement provides that the leasehold interests shall receive payment from the plant operator for 45% of the liquids attributable to the "owners' gas" processed for a period of five (5) years and thereafter until the weighted average price of gas sold equals 12¢ per Mcf at 14.65 psia and 60 degrees Fahrenheit, at which time the leasehold interests shall be entitled to 40% of such liquids; and the Processing Agreement further provides for payment to the

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leasehold interests for gas utilized for plant fuel and shrinkage.

(c) In connection with the Processing Agreement Harrington et al, by an instrument dated July 1, 1954, made an assignment to Dorchester of that part of the Natural Contract

relating to the operation of the Oklahoma plant and related gathering system. Natural, under date of June 25, 1954, consented to the contemplated transfers by Harrington, et al. Such consent was conditioned upon the execution by Harrington, et al of an instrument of assumption. This instrument was subsequently executed by Harrington et al and Dorchester on July 1, 1954.

(d) Dorchester paid Harrington et al for the two gasoline extraction plants and the related properties and facilities hereinabove referred to $6,500,000, of which $3,500,000 was represented by notes in that aggregate principal amount, issued under a mortgage and deed of trust from Dorchester to Hughes Seewald, Trustee, dated as of July 1, 1954. Of the remainder of the purchase price of $3,000,000—$2,500,000 thereof was borrowed by Dorchester from The Chase National Bank of the City of New York secured by a mortgage and deed of trust from Dorchester to Donald Scott, Jr., Trustee, dated as of July 1, 1954.

(e) Harrington et al sold to Nalam for $37,000,000 approximately 124,956 net leasehold acres in the Guymon-Hugoton Field of Oklahoma and Kansas and the Panhandle Field of Texas, on which were located 204 net producing gas wells. Harrington et al reserved the below-sea-level horizons. The leasehold interests so conveyed included the properties which were subject to the

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Natural Contract. In the conveyance from Harrington et al to Nalam dated July 1, 1954, Harrington et al reserved a deferred production payment of $75,000,000, payable from 80% of the wellhead volume of the gas produced until $10,000,000 was received, and thereafter out of 75% until the production payment was discharged or gas reserves reached 100,000,000,000 cubic feet, at which time the production payment terminated. The production payment commences when the total leasehold proceeds net to the grantors' interest shall have produced $38,000,000 with interest at 5%. The leasehold proceeds acquired by Nalam under the conveyance

included the liquid value payment and plant fuel and shrinkage payment provided for in the Processing Agreement.

(f) Nalam, to finance in part the purchase price, mortgaged the interests which it acquired from Harrington et al to the Metropolitan Life Insurance Company ("Metropolitan") and The Mutual Life Insurance Company of New York ("Mutual") to secure a mortgage of $35,000,000 for a term of fifteen (15) years which provided for interest at the rate of 5% per annum plus 3⅛% simple deferred interest which shall accrue and be payable when the final installment of principal on the loan is due. The matured amount of the deferred 3⅛% interest is subject to a 5% annual penalty interest. Such mortgage is known as the Deed of Trust, Mortgage and Assignment by Nalam to First National Bank in Dallas, Texas, dated July 1, 1954.

(g) Pursuant to the terms and provisions of an agreement between Metropolitan, Mutual, Nalam and Dorchester dated July 1,

•

[867]

1954, Nalam conveyed to Dorchester by conveyance dated July 1, 1954, the interests which it acquired from Harrington et al, subject to the mortgage which it had delivered as security for the loans from Metropolitan and Mutual and subject to the reservation of the following Production Payment:

(i) From 96½% of production the sum of $434,250;

(ii) From 96% of the production, after $434,250 has been received, the sum of $35,000,000, plus 5% interest;

(iii) From 10% of the production for five (5) years, commencing with the discharge of the $35,000,000 plus 5% interest; from 13% of production for the following ten (10) years; from 14% of production for the next ten (10) years; and from 19% of production thereafter the amount of the deferred matured interest plus 5% interest, plus the sum of $100,000;

(iv) From ½ of 1% of the production commencing with the date that the $434,250 has been received and continuing until the $35,000,000 plus 5% interest is discharged, and thereafter from 86½% of the production the sum of $250,000 plus 5% interest.

Dorchester paid Nalam $2,000,000 for the interest conveyed to it which, coupled with the $35,000,000 which Nalam borrowed from Metropolitan and Mutual, permitted Nalam to pay $37,000,000 to Harrington et al.

(h) Pursuant to the provisions of an agreement between Metropolitan, Mutual, Nalam, Cortez and Dorchester dated July 1, 1954, Nalam conveyed to Cortez, by conveyance dated July 1, 1954, the production payment which Nalam had reserved in the conveyance from Nalam to Dorchester in consideration of the payment by Cortez to Nalam of the sum of $25,000 plus the assumption by Cortez of Nalam's obligation to Metropolitan and Mutual.

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(i) Dorchester entered into the transaction with $3,100,000, of which $500,000 was represented by the consideration paid by Oil and Gas Property Management, Inc. ("Oil and Gas") for its common stock, and the remaining $2,600,000 represented moneys loaned to Dorchester by Oil and Gas. Such $3,100,000 was applied as follows:

(1) $2,000,000 paid to Nalam as hereinabove described;

(2) $500,000 paid to Harrington et al in connection with the purchase of the gasoline extraction plants, related properties and facilities;

(3) $500,000 working capital for Dorchester;

(4) $100,000 for fees and expenses of Dorchester in connection with the transaction.

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**(Exhibit 7)**

Federal Power Commission Docket No. G-6505
In the Matter of Dorchester Corporation
Exhibit No. **7**

## DORCHESTER CORPORATION
## BALANCE SHEET
### June 30, 1955

**ASSETS**

| | June 30, 1955 |
|---|---|
| CURRENT ASSETS | |
| Cash on Hand and in Banks | $ 330,209.83 |
| Accounts Receivable—Products | 230,091.35 |
| Accounts Receivable—Other | 28,831.23 |
| Accounts Receivable—Exchange Gas | 598.99 |
| Due from First National Bank, Trustee | 138,801.06 |
| Inventories—Products | 231,584.95 |
| Blending Stock and Additives | 52,787.78 |
| Warehouse | 57,978.61 |
| Special Deposits | 300.00 |
| Total Current Assets | $1,071,183.80 |
| FIXED ASSETS | |
| Developed Leaseholds | $ 396,771.22 |
| Leasehold Equipment | 1,635,674.72 |
| Plant Property and Equipment | 4,575,662.94 |
| Lease Lines | 327,463.95 |
| Field Gathering System | 1,687,731.93 |
| Autos, Trucks and Power Equipment | 32,721.89 |
| Railway Tank Cars | 661,500.00 |
| Work in Progress | 1,475.82 |
| Office Furniture and Fixtures | 20,002.50 |
| Other Property and Equipment | 258,269.47 |
| Total Fixed Assets—Gross | $8,597,274.44 |
| Less: Reserves | $ 268,120.13 |
| Total Fixed Assets—Net | $8,329,154.31 |
| PREPAID and DEFERRED ITEMS | |
| Prepaid Insurance | $ 27,258.02 |
| Organization Expense | 364.41 |
| Total Prepaid and Deferred Items | $ 27,622.43 |
| | $9,427,960.54 |

Federal Power Commission Docket No. G-6505
In the Matter of Dorchester Corporation
Exhibit No. 7

## DORCHESTER CORPORATION

### BALANCE SHEET

### June 30, 1955

| LIABILITIES | June 30, 1955 |
|---|---|
| CURRENT LIABILITIES (1) | |
| Accounts Payable | $ 90,535.72 |
| Notes Payable—Installments due within one year | 500,000.00 |
| Vouchers Payable | 127,521.68 |
| Accrued Payroll | 11,726.40 |
| Accrued Payroll Taxes | 7,832.22 |
| Accrued Insurance and Pension Plan Expense | 4,075.53 |
| Accrued Interest | 217,500.00 |
| Accrued Taxes | 153,728.30 |
| Accrued Royalties Payable | 101,477.41 |
| Exchange Gas | 10,456.45 |
| Total Current Liabilities | $1,224,853.71 |
| LONG TERM DEBT | |
| Chase National Bank | $1,500,000.00 |
| D. D. Harrington et al | 3,500,000.00 |
| Oil and Gas Property Management, Inc. | 2,600,000.00 |
| Total Long Term Debt | $7,600,000.00 |
| CAPITAL STOCK and SURPLUS | |
| Capital Stock—Issued 1,000 shares @ $1.00 | $ 1,000.00 |
| Capital Surplus | 199,060.00 |
| Earned Surplus | 103,106.83 |
| Total Capital Stock and Surplus | $ 603,106.83 |
| | $9,427,960.54 |

(1) The foregoing balance sheet does not reflect a claim against Dorchester presented by Natural Gas Pipeline Company of America in the amount of $572,315.84 plus $10,560.75 interest through April 30, 1955, representing the difference between the contract rate and Dorchester's rate for gas delivered during the period July 1, 1954 to March 1, 1955. The claim stipulates interest at the rate of 6% per annum.

Subject to year end adjustment.

Federal Power Commission Docket No. G-6505
In the Matter of Dorchester Corporation
Exhibit No. 8

## DORCHESTER CORPORATION
## INSURANCE COMPANY LOAN APPLICATION PROJECTION
## BASED ON 10¢ OKLAHOMA GAS PRICE

| INSURANCE COMPANY INCOME | July | August | September | October | November | December | January |
|---|---|---|---|---|---|---|---|
| Gas Sales—Kansas | $ 20,460 | $ 20,460 | $ 23,100 | $ 27,280 | $ 36,300 | $ 37,510 | |
| Oklahoma | $ 145,700 | $ 145,700 | $ 141,000 | $ 169,993 | $ 191,611 | $ 198,489 | |
| Texas | $ 108,160 | $ 108,160 | $ 110,800 | $ 114,000 | $ 124,000 | $ 132,000 | |
| Total | $ 270,320 | $ 270,320 | $ 264,900 | $ 317,273 | $ 350,011 | $ 367,999 | |
| Exclusions | 126,060 | 126,060 | 123,480 | 147,474 | 166,225 | 168,591 | |
| Net Gas Revenue | 148,260 | 148,260 | 151,420 | 173,849 | 193,686 | 199,408 | |
| Liquids—Oklahoma | 27,427 | 27,427 | 30,265 | 30,605 | 38,256 | 39,608 | |
| Texas | 27,915 | 27,915 | 27,313 | 32,788 | 38,424 | 38,477 | |
| Plant Gas | 21,800 | 21,800 | 21,875 | 24,175 | 26,800 | 27,350 | |
| Total Leasehold Revenue | 225,402 | 225,402 | 230,873 | 251,417 | 277,599 | 304,843 | |
| To Loans—96% | 242,636 | 211,240 | 221,638 | 241,360 | 268,415 | 292,649 | |
| To Interest—5% | 143,126 | 142,711 | 142,423 | 142,006 | 141,717 | 141,384 | 140,968 |
| To Principal | 99,510 | 68,529 | 100,213 | 69,234 | 79,921 | 99,976 | 127,447 |
| Balance | $34,250,770* | $34,182,241* | $34,082,028 | $34,012,794 | $33,932,873 | $33,832,897 | $33,705,450 |
| Required Amortization | $34,500,000 | | | | | | $33,700,000 |

*Actual balance from trustee statement.

NOTE: Applications to insurance company loans are made the first day of the second month following the month of accrual.

Exhibit No. 9

DORCHESTER CORPORATION

INSURANCE COMPANY LOAN PAYOUT
FOR OKLAHOMA GAS PRICES
OF 10¢ AND 6-1/4¢ /MCF

| | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 | 1963 |
|---|---|---|---|---|---|---|---|---|
| SCHEDULED INSURANCE COMPANY LOAN BALANCE AS OF JANUARY 1 | $ 33,700,000 | $ 32,100,000 | $ 30,450,000 | $ 28,750,000 | $ 27,050,000 | $ 25,299,500 | $ 23,500,000 | $ 21,700,000 |
| **CASE 1: OKLAHOMA GAS PRICE OF 10 CENTS** | | | | | | | | |
| GAS PROCEEDS | | | | | | | | |
| OKLAHOMA - 10 CENTS | $ 1,728,240 | $ 1,687,295 | $ 1,674,470 | $ 1,655,185 | $ 1,635,140 | $ 1,613,480 | $ 1,595,905 | $ 1,565,410 |
| KANSAS - 11 CENTS | 169,081 | 166,891 | 164,922 | 163,063 | 160,873 | 159,717 | 157,638 | 155,559 |
| * TEXAS - 8 CENTS AND 15 CENTS | 404,898 | 887,519 | 1,309,854 | 1,216,556 | 1,189,845 | 1,112,896 | 1,039,451 | 969,936 |
| TOTAL | $ 2,302,219 | $ 2,741,705 | $ 3,060,007 | $ 3,034,804 | $ 2,985,858 | $ 2,886,093 | $ 2,792,994 | $ 2,690,905 |
| LIQUID PROCEEDS | | | | | | | | |
| OKLAHOMA | $ 497,000 | $ 485,500 | $ 481,600 | $ 440,600 | $ 417,800 | $ 412,200 | $ 407,600 | $ 399,700 |
| TEXAS | 441,400 | 404,600 | 373,800 | 321,200 | 286,400 | 267,900 | 250,100 | 233,400 |
| TOTAL | $ 938,400 | $ 890,100 | $ 855,400 | $ 761,800 | $ 704,200 | $ 680,100 | $ 657,700 | $ 633,100 |
| TOTAL PROCEEDS | $ 3,240,619 | $ 3,631,805 | $ 4,004,646 | $ 3,796,604 | $ 3,690,658 | $ 3,566,193 | $ 3,450,694 | $ 3,324,005 |
| TO INSURANCE COMPANY LOANS 96% | 3,110,994 | 3,486,532 | 3,844,460 | 3,644,739 | 3,542,455 | 3,423,545 | 3,312,666 | 3,191,044 |
| BEGINNING YEAR LOAN BALANCE | $ 33,700,000 | $ 32,240,844 | $ 30,320,942 | $ 27,936,691 | $ 25,634,959 | $ 23,320,266 | $ 21,008,960 | $ 18,692,998 |
| GRANTEE PROCEEDS PAYOUT | $ 36,643,215 | $ 35,204,030 | $ 33,291,541 | $ 30,900,311 | $ 28,599,491 | $ 26,289,980 | $ 23,989,034 | $ 21,688,540 |

* NORTHERN NATURAL GAS COMPANY CONTRACT PROVIDES FOR PRICE RE-NEGOTIATION OF A FAIR, JUST, AND REASONABLE PRICE AS OF JULY 1, 1957, AND EACH FIVE YEARS THEREAFTER. BASED ON THE FACT THAT NORTHERN SIGNED A CONTRACT ON APRIL 15, 1954, SUPPLEMENTED ON SEPTEMBER 13, 1954, WITH KERR MCGEE, LOCATED APPROXIMATELY FIVE MILES FROM THE DORCHESTER PLANT, FOR GAS AT 16.1583 CENTS PER MCF AND SUBJECT TO ESCALATION, A PRICE OF 15 CENTS IS USED IN THIS PROJECTION FOR MID 1957 AND BEYOND.

| | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 | 1963 |
|---|---|---|---|---|---|---|---|---|
| **CASE 2: OKLAHOMA GAS PRICE OF 6-1/4 CENTS** | | | | | | | | |
| TOTAL PROCEEDS | $ 3,240,619 | $ 3,631,805 | $ 4,004,646 | $ 3,796,604 | $ 3,690,658 | $ 3,566,193 | $ 3,450,694 | $ 3,324,005 |
| **LESS: REDUCTION - OKLAHOMA TO 6-1/4 CENTS | 570,319 | 480,879 | 477,224 | 471,728 | 466,015 | 459,842 | 454,833 | 446,142 |
| OPERATING EXPENSE: DR. FIELD | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 |
| ADM & GEN | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 |
| COMPRESSION | 37,504 | 24,256 | 33,640 | 39,425 | 45,710 | 46,362 | 68,462 | 68,662 |
| EQUIPMENT | 16,075 | 16,075 | 19,290 | 22,505 | 25,720 | 32,150 | 38,580 | 32,150 |
| TOTAL | $ 849,398 | $ 746,710 | $ 759,654 | $ 759,158 | $ 762,945 | $ 763,854 | $ 787,375 | $ 772,454 |
| NET TO INSURANCE COMPANY LOANS | $ 2,391,221 | $ 2,885,095 | $ 3,248,992 | $ 3,037,446 | $ 2,927,113 | $ 2,802,339 | $ 2,663,319 | $ 2,551,551 |
| BEGINNING YEAR LOAN BALANCE | $ 33,700,000 | $ 32,978,434 | $ 31,715,295 | $ 30,015,737 | $ 28,445,515 | $ 26,907,805 | $ 25,419,027 | $ 23,996,241 |
| GRANTEE PROCEEDS | $ 2,670,300 | $ 3,150,926 | $ 3,527,422 | $ 3,324,876 | $ 3,224,043 | $ 3,106,351 | $ 2,995,861 | $ 2,877,863 |
| GRANTEE PROCEEDS PAYOUT | $ 36,643,215 | $ 35,786,851 | $ 34,395,565 | $ 32,548,435 | $ 30,813,903 | $ 29,093,779 | $ 27,406,029 | $ 25,744,947 |

** NATURAL CONTRACT PROVIDES FOR ESCALATION ON JULY 1, 1956, TO 8 CENTS PER MCF ON A 16.4 PRESSURE BASE (7.1463 CENTS ON A 14.65 PRESSURE BASE) FOR THE LIFE OF THE CONTRACT.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| DIFFERENCE IN OKLAHOMA GAS INCOME BETWEEN 10 CENTS AND 9.8262 CENTS PER MCF | $ 31,617 | $ 30,868 | $ 30,633 | $ 30,281 | $ 29,914 | $ 29,518 | $ 29,196 | $ 28,638 |

FEDERAL POWER COMMISSION DOCKET NO. G-0500
IN THE MATTER OF DORCHESTER CORPORATION
EXHIBIT NO. ____

FEDERAL PO
IN THE MAT
EXHIBIT NO

| 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 35,299,500 | $ 23,500,000 | $ 21,700,000 | $ 19,900,000 | $ 18,100,000 | $ 16,300,000 | $ 14,500,000 | $ 12,700,000 | $ 10,900,000 | -0- | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1,613,480 | $ 1,595,905 | $ 1,565,410 | $ 1,542,990 | $ 1,517,245 | $ 1,494,065 | $ 1,469,175 | $ 1,446,755 | $ 1,421,805 | $ 1,399,445 | $ 1,375,315 | $ 1,352,0 |
| 159,717 | 157,638 | 155,559 | 153,369 | 152,103 | 150,024 | 149,700 | 149,842 | 147,806 | 145,549 | 143,403 | 141,1 |
| 1,112,896 | 1,039,451 | 969,936 | 911,362 | 870,861 | 827,848 | 774,781 | 726,791 | 679,659 | 637,660 | 593,066 | 548,5 |
| 2,886,093 | $ 2,792,994 | $ 2,690,905 | $ 2,607,721 | $ 2,540,209 | $ 2,471,937 | $ 2,393,656 | $ 2,323,388 | $ 2,249,270 | $ 2,182,654 | $ 2,111,784 | $ 2,041,7 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 412,200 | $ 407,600 | $ 399,700 | $ 393,900 | $ 387,300 | $ 381,300 | $ 375,000 | $ 369,200 | $ 362,800 | $ 357,200 | $ 351,200 | $ 345,4 |
| 267,900 | 250,100 | 233,400 | 219,300 | 204,500 | 194,400 | 181,900 | 170,700 | 159,600 | 149,700 | 139,300 | 128,8 |
| 680,100 | $ 657,700 | $ 633,100 | $ 613,200 | $ 591,800 | $ 575,700 | $ 556,900 | $ 539,900 | $ 522,400 | $ 506,900 | $ 490,500 | $ 474,2 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 3,566,193 | $ 3,450,694 | $ 3,324,005 | $ 3,220,921 | $ 3,132,009 | $ 3,047,637 | $ 2,950,556 | $ 2,863,288 | $ 2,771,670 | $ 2,689,554 | $ 2,602,284 | $ 2,515,9 |
| 3,423,545 | 3,312,666 | 3,191,044 | 3,092,084 | 3,000,728 | 2,925,731 | 2,832,533 | 2,748,756 | 2,660,080 | 2,581,971 | 2,498,192 | 2,415,2 |
| 3,320,266 | $ 21,008,960 | $ 18,692,998 | $ 16,383,134 | $ 14,056,492 | $ 11,698,294 | 9,302,469 | 6,879,578 | 4,418,597 | 1,922,675 | -0- | |
| 6,289,980 | $ 23,989,034 | $ 21,688,540 | $ 19,399,957 | $ 17,099,771 | $ 14,772,907 | $ 12,413,361 | $ 10,032,451 | $ 7,619,058 | $ 5,175,966 | $ 2,691,948 | $ 170,1 |

OF JULY 1, 1957, AND EACH FIVE YEARS
1954, WITH KERR McGEE, LOCATED
A PRICE OF 15 CENTS IS USED IN THIS

| 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 AND BEYOND |
|---|---|---|---|---|---|---|
| $ 12,700,000 | $ 10,900,000 | -0- | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| $ 1,446,755 | $ 1,421,805 | $ 1,399,445 | $ 1,375,315 | $ 1,352,040 | $ 1,329,620 | $ 31,190,210 |
| 149,842 | 147,806 | 145,549 | 143,403 | 141,147 | 138,891 | 4,396,412 |
| 726,791 | 679,659 | 637,660 | 593,066 | 548,518 | 507,368 | 18,598,378 |
| $ 2,323,388 | $ 2,249,270 | $ 2,182,654 | $ 2,111,784 | $ 2,041,705 | $ 1,975,879 | $ 54,185,000 |

| | | | | | | |
|---|---|---|---|---|---|---|
| $ 369,200 | $ 362,800 | $ 357,200 | $ 351,200 | $ 345,400 | $ 339,600 | $ 5,577,400 |
| 170,700 | 159,600 | 149,700 | 139,300 | 128,800 | 119,100 | 4,290,000 |
| $ 539,900 | $ 522,400 | $ 506,900 | $ 490,500 | $ 474,200 | $ 458,700 | $ 9,867,400 |

| | | | | | | |
|---|---|---|---|---|---|---|
| $ 2,863,288 | $ 2,771,670 | $ 2,689,554 | $ 2,602,284 | $ 2,515,905 | $ 2,434,579 | $ 64,052,400 |
| 2,748,756 | 2,660,080 | 2,581,971 | 2,498,192 | 2,415,268 | 2,337,195 | 61,490,304 |
| 6,879,578 | 4,418,597 | 1,922,675 | -0- | | | |
| $ 10,032,451 | $ 7,619,058 | $ 5,175,966 | $ 2,691,948 | $ 170,180 | -0- | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 3,566,193 | $ 3,450,694 | $ 3,324,005 | $ 3,220,921 | $ 3,132,009 | $ 3,047,637 | $ 2,950,556 | $ 2,863,288 | $ 2,771,670 | $ 2,689,554 | $ 2,602,284 | $ 2,515,90 |
| 459,842 | 454,833 | 446,142 | 439,752 | 432,415 | 425,808 | 418,715 | 412,325 | 405,214 | 398,842 | 391,965 | 385,33 |
| 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,00 |
| 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,50 |
| 46,362 | 68,462 | 68,662 | 94,030 | 471,700 | 100,200 | 108,900 | 117,600 | 116,400 | 115,300 | 114,200 | 113,25 |
| 32,150 | 38,580 | 32,150 | 32,150 | 32,150 | 38,580 | 38,580 | | | | | |
| 763,854 | $ 787,375 | $ 772,454 | $ 791,432 | $ 1,161,765 | $ 790,088 | 791,695 | 755,425 | 747,114 | 739,642 | 731,665 | 724,08 |
| 3,802,339 | $ 2,663,319 | $ 2,551,551 | $ 2,429,489 | $ 1,970,244 | $ 2,257,549 | $ 2,158,861 | $ 2,107,863 | $ 2,024,556 | $ 1,949,912 | $ 1,870,619 | $ 1,791,82 |
| 3,907,005 | $ 25,419,027 | $ 23,996,241 | $ 22,614,968 | $ 21,287,849 | $ 20,362,227 | 19,095,702 | 17,865,309 | 16,624,159 | 15,404,719 | 14,199,246 | 13,013,20 |
| 3,106,351 | $ 2,995,861 | $ 2,877,863 | $ 2,781,169 | $ 2,699,594 | $ 2,621,829 | 2,541,841 | 2,450,963 | 2,366,456 | 2,290,712 | 2,210,319 | 2,130,57 |
| 4,093,779 | $ 27,406,029 | $ 25,744,947 | $ 24,109,349 | $ 22,499,204 | $ 20,890,144 | $ 19,278,331 | $ 17,676,115 | $ 16,074,676 | $ 14,477,763 | $ 12,876,652 | $ 11,275,87 |

TS ON A 14.65 PRESSURE BASE)

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 29,518 | $ 29,196 | $ 28,638 | $ 28,228 | $ 27,757 | $ 27,333 | $ 26,878 | $ 26,468 | $ 26,012 | $ 25,602 | $ 25,161 | $ 24,73 |

| | | | | | | |
|---|---|---|---|---|---|---|
| $ 2,863,288 | $ 2,771,670 | $ 2,689,554 | $ 2,602,284 | $ 2,515,905 | $ 2,434,579 | $ 64,052,400 |
| 412,325 | 405,214 | 398,842 | 391,965 | 385,331 | 378,942 | 8,889,216 |
| 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 178,000 | 5,340,000 |
| 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 47,500 | 1,425,000 |
| 117,600 | 116,400 | 115,300 | 114,200 | 113,250 | 307,350 | 3,140,000 |
| 755,425 | 747,114 | 739,642 | 731,665 | 724,081 | 911,792 | 18,794,210 |
| $ 2,107,863 | $ 2,024,556 | $ 1,949,912 | $ 1,870,619 | $ 1,791,824 | $ 1,522,787 | $ 45,258,190 |
| 17,865,309 | 16,624,159 | 15,404,719 | 14,199,246 | 13,013,205 | 11,847,079 | |
| 2,450,963 | 2,366,456 | 2,290,712 | 2,210,319 | 2,130,574 | 2,055,637 | 55,163,190 |
| $ 17,676,115 | $ 16,074,676 | $ 14,477,763 | $ 12,876,652 | $ 11,275,879 | $ 9,674,800 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| $ 26,468 | $ 26,012 | $ 25,602 | $ 25,161 | $ 24,735 | $ 24,325 | $ 372,891 |

**Dorchester Corporation**
**10-11-55**

**Condensed Schedule of Information from FPC Files Covering Gas Sales by Others in Texas County, Oklahoma**

**Exhibit 10**

| Seller | Purchaser | Cont. Date | FPC No. | Pressure Base | BTU | Delivery Point | Price June 1954 @ 14.65# Contract | Price June 1954 @ 14.65# Paid |
|---|---|---|---|---|---|---|---|---|
| Cabot Carbon Co. | Hugoton-Plains O&G | 7-26-51 | 12 | 14.65# | 950 | Wellhead | 8.26 | 9.8262 |
| Cabot Carbon Co. | Northern Natural | 2-17-53 | 3 | " | 1000 | " | 15¢ | 15¢ |
| Cities Service—Acct. of Cabot Carbon Co. | Cities Service | 3- 1-53 | 2 | " | — | " | 15¢ | 15¢ |
| Cities Service—Acct. of Cabot Carbon Co. | Cities Service | Oral Agreement | 3 | " | — | " | 15¢ | 15¢ |
| Cities Service Prod. Co. | Cities Service | 4-30-53 | 1 | " | 950 | " | Fair field | 9.8262 |
| Hugoton Plains O&G | Northern Natural | 9-15-49 | 1 | " | 950 | Residue | 9.3795 | 9.8262 |
| Hugoton Plains O&G | Northern Natural | 12- 8-51 | 3 | " | 950 | Wellhead | 7¢ or F.F. | 9.8262 |
| Frank Parkes | Cities Service | 4-23-52 | 1 | " | 950 | " | 10.285 | 10.285 |
| Republic Natural | Cities Service (& supls.) | 2-28-46 | 11 | " | 950 | Gathered | 10.85 | 10.85 |
| Republic Natural | Northern Natural | 9- 9-49 | 12 | " | 950 | Wellhead | 8.9329 | 9.8262 |
| Republic Natural | Panhandle Eastern | 7- 7-49 | 13 | " | 1000 | " | 4.4465* | 9.8262 |
| Skelly Oil | Cities Service | 8-28-45 | 50 | " | 950 | Gathered | 10.85 | 10.85 |
| Tascosa Gas | Phillips Pet. Co. | 12-22-49 | 1 | " | 950 | Wellhead | 6.2531 | 9.8262 |
| Terminal Facilities | Cities Service | 2-12-53 | 1 | " | 963 | " | 12¢ | 12¢ |
| The Texas Co. | Cities Service | 11-20-53 | 15 | " | 950 | " | 8.2629 | 9.8262 |
| The Texas Co. | Hugoton Plains O&G | 1-31-50 | 52 | " | 950 | " | 8.2629 | 9.8262 |
| The Texas Co. | Kansas-Nebraska Pipeline | 7- 1-53 | 13 | " | 950 | " | 10¢ | 10¢ |
| The Texas Co. | Northern Natural | 3-15-51 | 10 | " | 950 | " | 9.8262 | 9.8262 |
| The Texas Co. | Northern Natural | 9- 3-53 | 12 | " | 950 | " | 15¢ | 15¢ |
| The Texas Co. | Panhandle Eastern | 10-27-53 | 14 | " | 950 | " | — | 9.8262 |
| Texola Drilling Co. | Kansas-Nebraska | 6- 2-53 | 1 | " | 950 | " | 10¢ | 10¢ |
| J. M. Kessler | Southwestern Pub. Serv. | 7-26-48 | 2 | " | — | " | 3.933** | 9.8262 |
| J. M. Kessler | Cities Service | 12- 5-46 | 3 | " | — | " | 3.933** | 9.8262 |
| Edwin Cox | Northern Natural | 9- 9-49 | 4 | " | 950 | " | 8.9 | 9.8262 |
| Peerless O&G | Northern Natural (H.P.) | 9-26-50 | 2 | " | — | " | 8.25 | 9.8262 |
| Peerless O&G | Cities Service (Repub.) | 2-28-46 | 14 | " | 950 | " | 10.32 | 10.32 |
| Stanolind O&G | Kansas-Nebraska | | | " | | " | 10¢ | 10¢ |
| Stanolind O&G | Phillips Pet. Co. | | | " | | " | — | 9.8262 |
| United Producers | Cities Service (N.N.) | 6-28-54 | 18 | " | | " | 10¢ | 10¢ |
| Northern Pump | Phillips Pet. Co. | | | " | | " | — | 9.8262 |
| Butcher & Carey | Southwestern Pub. Serv. | 3-19-48 | | " | | " | 3.933** | 9.8262 |
| Kerr-McGee | Phillips Pet. Co. | 6-24-54 | 13 | " | 950 | " | 4¢ | 9.8262 |
| Kerr-McGee, Various op. agreements to Phillips Pet. Co. 1951, 1952, 1953 | | | | " | 950 | " | 4¢ | 9.8262 |

*Contract 4.4465¢ to July 7, 1954. Thereafter at average price agreed on basis of 1953-1954 sales to be 10.23338¢, which rate was filed 1-31-55.

**Contracts for 3.933¢ (14.65#) or such higher price as paid in field. Average is computed on both bases.

October 7, 1955

[927]

(**Exhibit 11**)

**Texas County Weighted Gas Price Data**

| Producer | No. of Wells | Deliverability Mcf | Price |
|---|---|---|---|
| Cabot Carbon | 29 | 38,283 | 15¢ |
| J. M. Kessler | 1 | 2,236 | 9.8262 |
| " " | 1 | 2,569 | 10.262 |
| Frank Parkes | 1 | 1,674 | 10.285 |
| Peerless | 3 | 6,688 | 10.32 |
| " | 1 | 1,352 | 9.8262 |
| Republic | 151 | 265,775 | 10.85 |
| Skelly | 87 | 124,885 | 10.85 |
| Texas Co (C.S.) | 3 | 2,576 | 9.8262 |
| " " (H.P.) | 1 | 1,612 | 9.8262 |
| " " (Phillips) | 1 | 1,965 | 9.8262 |
| " " (K.N.) | 7 | 6,334 | 10.0 |
| Texola | 5 | 13,914 | 10.018 |
| Cities Service (K.N.) | 1 | 1,133 | 10.0 |
| " " (N.N.) | 193 | 226,262 | 9.8262 |
| Edwin Cox | 1 | 1,114 | 9.8262 |
| Stanolind (K.N.) | 1 | 439 | 10.0 |
| " (Phillips) | 45 | 62,335 | 9.8262 |
| United Producers (C.S.) | 3 | 2,810 | " |
| " " (N.N.) | 5 | 3,456 | " |
| Hugoton Plains | 145 | 234,341 | " |
| Kerr-McGee | 12 | 14,487 | " |
| Northern Pump | 1 | 995 | " |
| Tascosa | 21 | 24,458 | " |
| Butcher & Carey | 1 | 2,414 | " |
| Subtotal | 720 | 1,044,107 | 10.408 Weighted Avg. |

[928]

| Producer | No. of Wells | Deliverability Mcf | Price |
|---|---|---|---|
| Kansas-Nebraska | 36 | 44,108 | 10.0 |
| Cities Service | 146 | 205,126 | 9.8262 |
| Panhandle Eastern | 119 | 159,632 | " |
| Phillips Pet. | 225 | 269,416 | " |
| SWPSC | 3 | 4,110 | " |
| Dorchester | 119 | 207,228 | 10.0 |
| TOTAL | 1,366 | 1,933,727 | 10.163 Weighted Avg. |

[929]

(Exhibit 12)

**Dorchester Corporation** **Exhibit #12**
**10-11-55**

**Texas County Weighted Price Data Based Upon "Contract Prices"**

Study of average field price covering remaining 41.3% of total Texas County, Oklahoma, gas sales after excluding Dorchester production, production by pipelines for their own systems and sales based on Oklahoma price order without contract escalation obligation. All are converted to 14.65# basis.

| Producer | Daily Deliverability Mcf | Contract Price per MCF |
|---|---|---|
| Cabot | 350 | 8.26 |
| Cabot | 37,009 | 15¢ |
| Cities Service (Cabot) | 1,274 | 15¢ |
| Cities Service (Cabot) | 3,500 | 15¢ |
| Hugoton-Plains | 234,341 | 9.3795 |
| Parkes | 1,674 | 10.285 |
| Republic | 264,918 | 10.85 |





| Producer | Daily Deliverability Mcf | Contract Price per MCF |
|---|---|---|
| Republic | 857 | 4.465 or 10.23338 |
| Skelly | 124,885 | 10.85 |
| Tascosa | 24,458 | 6.2531 |
| Cities Service (T.F.) | 46,270 | 12¢ |
| Texas Co. | 2,576 | 8.2629 |
| Texas Co. | 6,334 | 10¢ |
| Texas Co. | 1,612 | 9.8262 |
| Texola | 13,914 | 10¢ |
| Kessler | 2,236 | 3.933 or 9.8262 |
| Peerless | 1,352 | 8.25 |
| " | 6,688 | 10.32 |
| Stanolind | 439 | 10¢ |
| Republic | 1,000 | 8.9329 |
| Texas Co. | 2,500 | 8.2629 |
| United | 3,456 | 10.0 |
| Butcher & Carey | 2,414 | 3.933 or 9.8262 |
| Kerr McGee | 14,487 | 4.0 |
| Total Deliverability | 798,544 | Weighted Price 10.332¢ or 10.374¢ per MCF |

[996]

**(Exhibit 14)**

**Natural Gas Pipeline Company of America**

**Summary of Gas Purchase Contracts (1)**

| Seller | Point of Delivery | Date of Contract | Term or Termination Date | Contract Quantity Daily in MMCF-(2) Avg. | Max. | Min. | Price |
|---|---|---|---|---|---|---|---|
| 1. Colorado Interstate Gas Co. | Hutchinson Co., Tex. Texas Co.,Okla. | 10-15-31 (1) | 2-14-67 (2) | 168 | 184 | 154 | As per rate schedules filed with FPC.* |
| 2. (a) The Shamrock Oil & Gas Corp. | Moore Co., Tex. | 12-2-46 | Life of leases | 14 | 16 | 12 | 5.826<br>6.5¢ from 1-1-53 to 1-1-58; 7¢ thereafter adjusted to 1000 Btu. 16.4 |
| (b) The Shamrock Oil & Gas Corp. | Moore Co., Tex. | 7-1-47 | Life of leases | 14 | 16 | 12 | Same as for contract dated 12-2-46. 16.4 |
| (c) The Shamrock Oil & Gas Corp. | Moore Co., Tex. | 11-21-54 | 12-31-55 | 20 | — | — | 12¢ adjusted to 1000 Btu. |
| 3. Earl Nutter | Carson Co., Tex. | 9-29-49 | Life of lease | 1 | — | — | 6.253<br>7¢ from 7-1-51 to 7-1-56; thereafter 8¢. 16.4 |
| 4. Burnett-Cornelius | Carson Co. Tex. | 2-11-50 | Life of lease | .5 | — | — | 6.25303¢ from 7-1-51 to 7-1-56; 7.14632¢ thereafter |
| 5. Kimberiin & Howse | Carson Co., Tex. | 3-30-53 | Life of lease | .5 | — | — | 8¢ for life of contract. |
| 6. Sinclair Oil & Gas Co. | Roberts Co., Tex. | 1-16-50 | 20 years | 28 | 39 | 17 | 8.93¢ 1st 5-yr. period; 9.83¢ 2nd 5-yr. period; 10.72¢ 3rd 5-yr. period; 11.61¢ 4th 5-yr. period. |
| 7. Dorchester Corporation | Texas Co., Okla. | 12-1-46 | Life of leases | 85 | — | — | 6.253<br>7¢ from 7-1-51 to 7-1-56; 8¢ thereafter, adjusted to 1000 Btu. Minimum price of 9.8262¢ has been paid since 8-1-52. 16.4 |
| 8. R. H. Fulton | Hansford Co., Tex. | 8-2-54 | 20 years | 4 (3) | 10 | 2 | 15¢ 1st 5 years; not less than 16¢ 2nd 5 years; 17¢ 3rd 5 yrs.; 18¢ 4th 5 yrs. |
| 9. Irving Alexander et al (4) (Christie Mitchell) | Wise, Jack and Parker Counties, Texas | 7-12-54 | 20 years | 62 (3) | 75 | 60 | 15¢ for 1st 5-yr. period, not less than 1¢ increase for each subsequent 5-yr. period with adjustments as per contract. |

(continued)

Conversion factor from 16.4 to 14.65 is .89329

* Current rate is 14.78¢ per Mcf, which went into effect 2-1-55 under bond.

Exhibit No 15

Exhibit no 19

are Photographed

on last Card

| Seller | Point of Delivery | Date of Contract | Term or Termination Date | Contract Quantity Daily in MMCF-(2) Avg. | Max. | Min. | Price |
|---|---|---|---|---|---|---|---|
| 10. Warren Petroleum Company (4) | Wise, Jack and Parker Counties, Texas | 7-12-54 (1) | 20 years | 10 (3) | 12½ | 10 | 15¢ for 1st 5-yr. period; not less than 1¢ increase for each subsequent 5-yr. period with adjustments as per contract. |
| 11. Mid-Continent Petroleum Co. (4) | Wise, Jack and Parker Counties, Texas | 7-12-54 | 20 years | 6 (3) | 7½ | 6 | Same as above. |
| 12. Phillips Petroleum Co. | Moore and Carson Counties, Texas | 2-2-54 (1) | 12-31-55 | 25 | 60 | 25 | 14¢<br>13¢=11.61 |
| 13. Cities Service Gas Company | Carson Co., Tex. | 3-1-52 | 5 years | 25@16.4 | — | — | 10¢ 1st yr. increasing 1¢ each year to 14¢ in 5 years |
| 14. The Texas Company (4) | Texas Co., Okla. Hansford Co., Texas | 2-21-55 | 20 years | 8 (3) | 12 | — | 16¢ 1st year, increasing annually in .2¢ increements for life of contract. |

Notes: (1) As amended.

(2) Natural has the right to receive gas thereafter from Colorado reserves in the Panhandle on an equitable basis.

(3) Contract quantity is 1 MMCF of gas per day for each 10,000 MMCF of total recoverable reserves.

(4) Contract not certificated to date.

AGP:JP
3-28-55

This summary supersedes previous one dated March 24, 1955.

151a

[997]

Exhibit No. 14

997

# Gas Purchase Contract

BETWEEN

NATURAL GAS PIPELINE COMPANY OF AMERICA

AND

HARRINGTON & MARSH

DATED AS OF
DECEMBER 1, 1946

## GAS PURCHASE CONTRACT.

---

**THIS GAS PURCHASE CONTRACT** made as of December 1, 1946, by and between **NATURAL GAS PIPELINE COMPANY OF AMERICA**, a Delaware corporation having offices at 20 North Wacker Drive, Chicago 6, Illinois, herein called "Natural", and **D. D. HARRINGTON, STANLEY MARSH, JR., ESTELLE FARISS MARSH, T. J. WAGNER, JR., IDA D. MARSH**, and **ISABEL MARSH McCORMICK**, joined by her husband, **JAS. L. McCORMICK**, and joined herein by **STANLEY MARSH, JR.**, Independent Executor of the Estate of Stanley Marsh, deceased, both jointly and severally, said parties comprising the partnership doing business under the firm name of **HARRINGTON & MARSH**, all residents of Amarillo, Texas, all or any of whom may be addressed at Amarillo Building, Amarillo, Texas, herein called "Sellers",

WITNESSETH

That in consideration of the mutual covenants hereof, the parties agree as follows, to-wit:

### ARTICLE FIRST.

SITUATION AND PURPOSE OF PARTIES.

1. Natural is the owner of a natural gas transportation system originating near Gray, Oklahoma, and terminating near Joliet, Illinois, with a trunk lateral line traversing northern Illinois. By means of said system it transports natural gas and sells and delivers the same for consumption in the great Chicago metropolitan area and other

localities, and may make deliveries for consumption in additional areas. Its system is integrated with a natural gas transportation system owned by Texoma Natural Gas Company, herein called "Texoma", which system originates in the Panhandle gas field of Texas and connects with the origin of Natural's pipeline system. Natural receives from Texoma's transportation system all gas presently transported and sold by it. Natural and Texoma are now engaged, under authorization from Federal Power Commission heretofore issued to them, in enlarging their respective transportation systems so that the integrated system will require on days of operation at maximum capacity an intake of approximately three hundred forty million (340,000,000) cubic feet of gas per day, measured as in Article Twelfth provided. Natural and Texoma have made application to the Federal Power Commission for a certificate of convenience and necessity permitting them to additionally enlarge such integrated system, so that same will require an intake of approximately four hundred seventy million (470,000,000) cubic feet of gas per day; and intend, if permitted by certificate satisfactory to them obtained, to construct additional facilities to obtain such additional enlargement of such integrated system. The construction of such additional facilities is herein referred to as the "proposed expansion". Natural desires to obtain from Sellers that proportion of its total system requirements of gas specified in Article Third hereof. The proposed expansion contemplates, among other things, the construction of a pipeline connecting Natural's pipeline system at its present Station 2 near Gray, Oklahoma, with the gas reserves of Sellers hereinafter referred to, and the installation at or near the intake terminal of said pipeline of a compressor station and appurtenances, herein referred to as "Station 1", for the compression of gas to be received from Sellers; all of such facilities adequate

for handling seventy-six million (76,000,000) cubic feet of gas per day.

2. Sellers represent that they own leasehold estates, mineral interests, lands, gas purchase contracts or other property rights covering in excess of seventy-eight thousand (78,000) acres of land in Texas County, Oklahoma, and in what is referred to by the Oklahoma Corporation Commission as the Guymon-Hugoton field, which vest in them the right to produce gas from such lands upon satisfaction of the covenants of such grants, as long as gas may be produced therefrom. Such rights, the lands covered thereby, and/or the gas deposits underlying said lands, as the sense may best indicate, are herein referred to as "gas reserves". A detailed description of the instruments creating such gas reserves and the lands covered thereby is attached hereto and marked "Exhibit A". A map showing the location of the gas reserves in relation to the sections and townships in Texas County, Oklahoma, is attached hereto and marked "Exhibit B". Sellers desire to produce the gas underlying said gas reserves and to sell the same to Natural. They have completed a number of gas wells and propose to drill additional gas wells thereon, construct gathering lines connecting such wells to said Station 1, and install all other necessary facilities and appurtenances, and to operate the same; all for the purpose of delivering gas to Natural under the terms of this contract. They desire, and will undertake, to remove certain constituents of the gas to be delivered, after its compression by Natural at Station 1, and for that purpose intend to construct a gasoline plant and dehydration plant on the pipeline to be constructed by Natural, on the discharge side of said Station 1.

## ARTICLE SECOND.

### INITIAL ACTIVITIES.

1. Natural and Texoma have made application to the Federal Power Commission for the proposed expansion, and Natural agrees to prosecute and to cause Texoma to prosecute said application with due diligence. Should they be unable to secure such certificate or be able to obtain it only with conditions not acceptable to them on or before June 1, 1947, Natural shall promptly notify Sellers, and this contract shall then terminate.

2. Sellers shall, within thirty (30) days after Natural's prompt request, exhibit to Natural such evidence of their title to their gas reserves as shall in the opinion of counsel for Natural show that they are the lawful owners thereof and of the rights therein herein described, and are in a position to dedicate such reserves to the use of this contract. Should, in the opinion of Natural's counsel, Sellers fail to exhibit such title to substantially all of the gas reserves described, Natural may at its option terminate this contract.

3. If and when Natural and Texoma shall have obtained a certificate of convenience and necessity from the Federal Power Commission for the proposed expansion within the above specified time limit, on terms satisfactory to them, Natural shall proceed and shall cause Texoma to proceed with due diligence, the availability of materials and other uncertain factors considered, to complete the proposed expansion, and as part thereof shall complete its Station 1, and a pipeline therefrom to its Station 2. Said station shall be located within 1 mile from the center of Section 7, Township 4 North, Range 17 East, in Texas County, Oklahoma unless the parties mutually agree otherwise. Natural

shall so arrange its pipeline facilities that the gas may, after compression at said station, be delivered to the gasoline and dehydration plants of Sellers in Article Fifth hereof specified, and then passed through a metering station in Article Twelfth described, which metering station shall be located on the discharge side of said plants.

4. It is contemplated that some of the increment in capacity to be obtained by the proposed expansion may be available before the entire construction is completed. Upon the granting and acceptance of a certificate of public convenience and necessity upon the application above referred to, Natural shall notify Sellers thereof of the probable date of initial delivery hereunder, and at the same time shall advise them of its best estimate of the quantity of gas which it desires to then have available for delivery hereunder. Sellers shall proceed with due diligence to drill gas wells, install gathering lines, construct the gasoline and dehydration plants herein described, provide all other facilities, and do all other things and acts necessary to make available for delivery hereunder at such date of initial delivery the quantities of gas so estimated, the availability of materials and all physical and legal restrictions on production considered. As the work on the proposed expansion continues, Natural shall from time to time notify Sellers of its estimates of any additional quantities of gas required to be available hereunder, in each case at the end of one year from the date of the notice, and Sellers shall thereupon install such additional facilities and do all acts and things as may be necessary to increase the deliveries at the end of the named period by the quantity so estimated; all within the maximum daily quantity required by this contract.

## ARTICLE THIRD.

### QUANTITIES OF GAS TO BE DELIVERED.

1. Sellers agree to sell and deliver to Natural and Natural agrees to purchase and receive from Sellers, subject to the limitations herein expressed, such quantities of gas as shall average daily, as nearly as is practicable in good operation seventy-six million (76,000,000) cubic feet per day and, in addition, any quantities of gas used for compressor station operation as provided in Article Fourth hereof. The obligation of Natural to purchase and Seller to deliver such quantities of gas shall commence not later than eighteen months after Natural and Texoma have obtained a certificate of convenience and necessity from the Federal Power Commission for the proposed expansion, on terms satisfactory to them, provided materials for such expansion are available to enable them to complete such construction within the eighteen months period; otherwise, as soon as the availability of materials shall permit the completion of the proposed expansion. Any variations in deliveries from said daily quantity shall be adjusted by Buyer currently and as soon as practicable. Prior to the completion of the proposed expansion, the quantities to be delivered hereunder shall be limited to the quantities which Natural may desire to take within the quantities stated in the notices provided by Article Second, Paragraph 4, hereof.

2. The obligation of Sellers to deliver Natural such quantities hereunder shall be limited to the quantity of gas which can be legally produced from the gas reserves less the quantity of gas excepted and reserved hereunder for the development and operation of Sellers' leaseholds and plants. Should any law or any rule or regulation of any state or Federal authority having jurisdiction require

Natural to purchase a portion of such quantities from other than Sellers in said Guymon-Hugoton field, or shall make it necessary for Natural to do so in order to obtain such quantities, the quantity of gas otherwise to be delivered by Sellers hereunder shall be reduced by the quantity of gas Natural is so required to purchase during the time that Natural is so required. Natural may obey any such law, rule or regulation without legal contest.

## ARTICLE FOURTH.

### DELIVERY AND PRESSURE.

Sellers shall deliver gas hereunder into the custody of Natural and Natural shall first receive the custody of same, at the intake side of its Station 1, at a gauge pressure of not less than 150 pounds per square inch. The gas shall be compressed at said station by Natural according to the operating practice which it may from time to time follow, but not in excess of a gauge pressure of 800 pounds per square inch. Natural shall, after compression, then re-deliver said gas to Sellers' gasoline plant at an average daily temperature not in excess of 95° F. and shall use all reasonable effort to keep such gas free from compressor lubricating oil. Sellers shall be entitled to all hydrocarbons removed from the gas by such compression provided the collecting thereof be at their sole cost and risk. Sellers shall, after treatment at their gasoline and dehydration plants, re-deliver the gas into Natural's pipeline at the outlet of said plants at a temperature within 5° F. of a temperature at which the gas is received by Sellers at the inlet of said plants, provided Sellers shall not be required to reduce the temperature of such gas below 70° F. A metering station to be installed and operated by Natural as provided in Article Twelfth hereof shall be located near

the outlet of said plants at which point title to the gas shall pass to Natural; except, the gas required by Natural for its compressor station operation shall be metered separately at a point at or near said station and title thereto shall pass to Natural as used. Such gas so used for compressor station operation by Natural shall be assumed and agreed for purposes of measurement and payment hereunder to have a flowing temperature in the meter of 60° F. and a total heating value of nine hundred sixty-five (965) British thermal units per cubic foot.

## ARTICLE FIFTH.

### GASOLINE PLANT OPERATION.

1. Sellers reserve the right, subject to the limitations in this Article specified, to extract from the gas to be delivered hereunder nitrogen, helium, and also natural gasoline, butane, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents; and Sellers shall remove certain constituents from the gas; all as hereinafter provided.

2. Sellers shall, prior to the first delivery of gas hereunder, construct at a proper location approximately one mile from Station 1 an absorption type gasoline plant and a dehydration plant for the recovery of constituents to be removed from the gas delivered hereunder, which plants shall be adequate for the treatment of seventy-six million (76,000,000) cubic feet of gas per day. Sellers shall at all times maintain said plants in good repair and operating efficiency, and shall restore the same or any part thereof which may be destroyed or otherwise become inefficient.

3. In the operation of said gasoline and dehydration plants, Sellers shall:

(a) Reduce the pressure of the gas between the inlet and the outlet of the plants by no more than is necessary for their efficient operation, and in no case more than fifteen (15) pounds per square inch.

(b) Conform their operations to the requirements of the efficient compression and transportation by Natural of gas delivered hereunder, to the full extent same may be accomplished without undue burden on the operation of said plants.

(c) Remove from the gas treated all hydrocarbons and water necessary to produce a dew point of the treated gas which shall not exceed a temperature of twenty-five (25) degrees Fahrenheit at a gauge pressure of not more than seven hundred eighty-five (785) pounds per square inch, in order that the formation of hydrates and/or the condensation of hydrocarbons will not occur in Natural's pipeline system.

(d) Refrain from permanently removing hydrocarbons from the gas to the extent that their removal may reduce the heating value of the gas below nine hundred fifty (950) British thermal units per cubic foot.

4. The parties agree that the proper operation of said gasoline and dehydration plants is essential to the preparation of the gas for its efficient transportation. Should Sellers fail to operate said gasoline and dehydration plants in the manner herein required, Natural may, as often as such default may occur, enter upon the premises where said plants are located, take possession of said premises, plants and all appurtenances, place and maintain the same in adequate repair and operating condition, install any equipment or additions thereto required for efficient operation, and thereafter operate the same, all according to its own judgment and discretion. In such event it may market or otherwise dispose of all products recovered as if

the owner thereof according to its discretion, but shall account to Sellers for the receipts thereof, if any. Sellers shall on demand pay Natural all expenses in Natural's judgment reasonably applicable to such activities, and in addition a supervising charge of ten per cent (10%) above all such expenditures, together with interest at the rate of six per cent (6%) per annum on all amounts not paid when due; and such charges against Sellers shall be a lien on such plants, their appurtenances, and the real estate where located, and the proceeds, if any, received by Natural for the products produced, and shall be deductible against any sums payable for gas delivered hereunder. Natural may continue such operation until it has received assurance from Sellers satisfactory to it that the said plants will thereafter be operated as herein provided.

## ARTICLE SIXTH.

### PRICE AND PAYMENT.

1. For all gas delivered hereunder Natural shall pay to Sellers an amount calculated on the following prices per one thousand (1000) cubic feet, metered as in Article Twelfth herein provided; that is:

(a) Until the first day of July, 1951, six cents (6¢),

(b) During the five-year period commencing July 1, 1951, seven cents (7¢),

(c) Commencing July 1, 1956, and for the remaining term of this contract, eight cents (8¢).

2. During any day when the gas delivered contains on the average nine hundred sixty (960) British thermal units, or more, per cubic foot, measured as in Article Eleventh provided, the price determined as in Paragraph 1 of this Article shall be increased or decreased in direct proportion as such British thermal unit content varies

from nine hundred sixty-five (965) units per cubic foot; during any day when the gas delivered contains on the average less than nine hundred sixty (960) and more than nine hundred fifty (950) British thermal units per cubic foot, such price shall be reduced by ten per cent (10%); during any day when the gas delivered contains on the average nine hundred fifty (950), or less, British thermal units per cubic foot, and is accepted by Natural, such price shall be reduced by twenty per cent (20%).

3. Sellers shall pay all ad valorem taxes on their gas reserves and properties and all present gross production taxes, severance taxes and other excise taxes upon or in respect to the gas delivered hereunder up to the point of delivery of the gas to Natural. All increases in taxes due to increases in the rates of such present gross production taxes, severance taxes, and excise taxes upon or in respect of the gas delivered hereunder or the production, transportation or handling thereof up to the point of delivery of the gas to Natural shall be borne one-half by Sellers and one-half by Natural; provided, that all excise taxes upon or in respect of the manufacture or recovery of hydrocarbons by Sellers shall be borne by Sellers.

4. Natural shall render to Sellers on or before the tenth day of each month a statement showing the total quantity of gas received into the integrated pipeline system of Natural and Texoma and the quantities of gas delivered hereunder by Sellers on each day during the calendar month next preceding, the average British thermal unit content of the gas delivered by Sellers each day of such calendar month, and shall accompany such statement with the applicable charts and such other data obtained or used by Natural for the preparation of such statement. Sellers shall within five (5) days after receipt of such statement render to Natural an invoice for the gas deliv-

ered hereunder during such calendar month and shall at the same time return to Natural all charts and data delivered to them with Natural's statement. Natural shall pay Sellers for the gas delivered during such calendar month within ten (10) days after receipt of invoice; and upon failure so to do, interest thereon shall accrue at the rate of six per cent (6%) per annum. If Natural should fail to pay any amount due hereunder, to the extent same is not in bona fide dispute, for a period of sixty (60) days after its due date, Sellers may suspend deliveries of gas hereunder until such payment is made. Any statement or invoice shall be subject to correction within one (1) year after payment made by Natural for gas delivered during any calendar month, but if claim for correction is not made within that time, such statement and invoice shall become final as to both parties.

5. Natural may at its option make payment of any sum/s due hereunder by depositing same in the First National Bank and Trust Company of Oklahoma City, Oklahoma, to the credit of Harrington & Marsh and such deposit/s shall fully acquit Natural, irrespective of ownership or any change in ownership, of the rights hereunder of Sellers or any of them; provided, however, Sellers may on authorization in manner and form acceptable to Natural direct such payment/s to be made otherwise.

## ARTICLE SEVENTH.

### OBLIGATION OF SELLERS TO DEVELOP GAS RESERVES AND PROVIDE FACILITIES FOR DELIVERY.

Sellers agree that pursuant to the notices outlined in Article Second hereof, and thereafter during the continuance of this contract, they will, to the full extent required by prudent operation diligently develop the gas reserves,

drill gas wells thereon, install necessary gathering systems, booster stations, equipment, property and appurtenances for the gathering and delivery of gas, from time to time acidize or otherwise treat their gas wells to the extent necessary to obtain the fullest possible production therefrom, if necessary provide facilities to condition the gas produced to meet the requirements of this contract, continuously maintain their gas wells, pipelines, and all their property in good operating condition and operate the same with due diligence; all to the extent necessary to maintain at all times sufficient open flow in such wells and adequate capacity in pipelines, gasoline and dehydration plants and other properties so that Sellers will be able to deliver to Natural from said gas reserves according to the provisions of this contract, the availability of materials and all physical or legal restraints on production and sale considered, seventy-six million (76,000,000) cubic feet of gas per day; except that pending completion of the proposed expansion Sellers shall be required to maintain available for delivery no greater quantities of gas than those specified in notices given pursuant to Paragraph 4 of Article Second hereof.

## ARTICLE EIGHTH.

REMEDY FOR FAILURE TO MAKE DELIVERIES.

1. "Day" shall be taken to mean the twenty-four (24) hour period commencing at eight o'clock A. M., Central Standard Time.

2. Should Sellers from causes not excused by the provisions of Article Fifteenth hereof or attributable to the inability of Natural to receive Sellers' deliveries, fail on as many as seven (7) days (which need not be consecutive) during any thirty (30) day period to deliver the quantities

of gas required to be delivered by it under the provisions of Article Third hereof, Natural may, as often as such situation occurs and without waiver from prior indulgence and without prejudice to other remedy, at its option to be exercised within ninety (90) days after such occurrence, give notice to Sellers that it elects to reduce during the remaining term of this contract the quantity otherwise required to be delivered by a stated quantity per day, which shall not be more than the maximum quantity of the deficiency occurring during any twenty-four (24) hour period, and thereafter the quantities otherwise to be delivered hereunder shall be reduced by such quantity per day. Provided, however, should Sellers be prevented from delivering the quantities of gas required to be delivered hereunder by reason of any law in the nature of a proration or common purchaser law, or any regulation thereunder, such reduction of the quantities otherwise to be delivered hereunder by a stated quantity per day shall not exceed the daily average deficiency during said thirty (30) day period.

## ARTICLE NINTH.

### GAS RESERVES.

1. Sellers agree that during the term of this contract they will do and perform all acts and things within reason which are necessary to continue in force, renew and maintain their ownership of the gas reserves and their exclusive right to produce gas therefrom. Provided that Sellers may abandon any gas leaseholds or other estates or rights covering portions of the gas reserves, where the land covered thereby in their judgment has been condemned by development, and may abandon any producing leasehold which may no longer be operated at a profit; conditioned, however, that Sellers shall first in writing offer, at least

ninety (90) days prior to any such abandonment, to sell, convey and assign to Natural the gas rights held by them in and to the lands, together with any gas wells and appurtenant equipment thereon, the gas rights to which are proposed to be abandoned, at the salvage value of such gas wells and appurtenant equipment, if any, in place. Should Natural elect to accept said offer within thirty (30) days after receiving same, such property shall be transferred to Natural accordingly.

2. Sellers shall, for the purpose of consolidating the gas reserves into better operating position, have the right to exchange portions of the present gas reserves for other acreage of like area and productive quality situated within the area outlined and designated "Approved Area" on the map attached hereto and marked Exhibit "B." Upon such exchange Sellers shall prepare, execute and forward to Natural in duplicate, for its execution, a suitable written instrument in recordable form, which Natural will execute and return one Copy to Sellers, which instrument by its terms shall release from the lien of dedication hereunder the dedicated acreage so exchanged and impress with the lien of dedication the substituted acreage acquired to the same extent as if originally part of the gas reserves.

3. Sellers may at their option by notice to Natural acquire and dedicate to the uses of this contract any other gas leases, gas purchase contracts, or gas rights covering lands situated within the area outlined and designated "Approved Area" on the attached map; and thereupon such additional acreage shall become subjected to all the terms of this contract.

4. The parties contemplating that the gas which may be produced from the gas reserves will be no more than sufficient to assure, after deduction of quantities thereof used for lease and gasoline plant and compressor plant

operation, the deliveries of gas required under this contract, for the purpose of preserving the gas underlying said gas reserves for such deliveries, Sellers agree that they will, during the term of this contract, dedicate the gas reserves to the purpose of the contract, and will not sell or deliver gas produced from the gas reserves to any person other than Natural; except:

(a) Until Natural shall have commenced acceptance hereunder of the quantities of gas to be purchased by it as provided in Article Third hereof, Sellers, in order to keep their leaseholds in force and prevent drainage of gas from their gas reserves, shall have the right to sell and deliver gas therefrom to others than Natural.

(b) Sellers shall during any period when the production of gas from their gas reserves is subject to or limited by any law in the nature of a proration or ratable take law, or any regulation or order thereunder, have the right to sell to others than Natural any amount of gas prorated to or allowed Sellers' wells in excess of the amount of gas Sellers are currently required to deliver to Natural hereunder.

(c) Sellers also reserve the right to use all gas required for the development and operation of their leaseholds and their said plants, together with such gas reserved by lessors for domestic usage under the provisions of Sellers' leases and unitization agreements.

5. Should Sellers be unable to produce the quantities of gas required to be delivered hereunder from their gas reserves by reason of either the physical limitations of their wells located thereon or legal restrictions resulting from a proration or ratable take law, or any regulation or order thereunder, Sellers shall have the preferential right to supplement the quantities which can be physically and legally produced from their reserves by the purchase of gas from others for redelivery hereunder to the extent

necessary to enable Sellers at all times to deliver Natural that proportion of its total system requirements of gas specified in Article Third hereof.

6. It appearing that Natural contemplates the expenditure of large sums of money in the construction of pipelines to Sellers' gas reserves, and because of such expenditure and because the nature of its business requires assurance that the gas reserves of Sellers shall be continuously available to Natural during the entire period of this contract, the parties agree: that the provisions hereof shall be deemed covenants running with such gas reserves and the property and all interests of Sellers used or useful for the satisfaction by Sellers of the provisions of this contract to be by them performed, and shall follow the ownership of same in any hands; that Natural shall be deemed to have acquired by this contract an equitable title in the said gas reserves and property to the extent necessary to preserve and obtain said gas for the satisfaction of the obligations of Sellers under this contract; and that this contract and all its provisions shall be subject to specific performance or any other applicable remedy.

## ARTICLE TENTH.

### Quality of Gas.

1. The gas delivered hereunder at the metering equipment of Natural shall, subject to the standards in this contract expressed, be natural gas as produced in its natural state, except: that Sellers shall treat the gas for recoverable constituents as in Article Fifth hereof provided, and shall, if necessary, treat such gas in order to bring it within the standards of purity hereinafter in this Article expressed.

2. Said gas:

(a) shall be commercially free from solid and/or liquid matter, both at the metering equipment of Natural and at the point where it first enters the custody of Natural;

(b) shall, at the metering equipment of Natural, not contain more than one grain of hydrogen sulphide per one hundred (100) cubic feet, provided that this purity requirement shall be considered as satisfied if a strip of white filter paper, recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of wat r, be exposed to the gas for one and one half (1½) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas not impinging from a jet upon the test paper, and after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with the solution and not exposed to the gas;

(c) shall, at the metering equipment of Natural, not contain more than thirty (30) grains of total sulphur per one hundred (100) cubic feet;

(d) shall, at the metering equipment of Natural, meet the requirements of subparagraph 3(c) of Article Fifth;

(e) shall, at the metering equipment of Natural, contain at least nine hundred fifty (950) British thermal units per cubic foot, measured as in Article Eleventh hereof provided, except as Natural may at its option accept gas of less content.

3. The sulphur and hydrogen sulphide content of the gas delivered by Sellers to Natural shall for the purposes hereof be determined by tests made or caused to be made by Natural as often as it may desire, of samples of gas taken from the gas stream from which deliveries are made, at or near the point of measurement.

4. Should such tests of the gas disclose the presence of

sulphur or hydrogen sulphide in excess of the amounts above specified:

(a) Sellers shall immediately discontinue deliveries hereunder from their wells known or found to produce gas which does not meet such tests, and progressively substitute for such deliveries gas from other suitable wells until a satisfactory test be obtained.

(b) If, after the procedure in the foregoing subparagraph (a) has been followed, tests of the gas continue to disclose the presence of sulphur or hydrogen sulphide in excess of the amounts in this Article permitted, Sellers shall remove all excess sulphur and hydrogen sulphide content by the installation and operation of facilities adequate for such purification.

(c) Natural may, without prejudice to any other remedy, upon advising Sellers of its intention so to do, refuse to accept further deliveries of gas from Sellers hereunder until such time as the gas at the point where samples are taken for testing shall conform to the foregoing sulphur and hydrogen sulphide content requirement.

5. Natural shall have the right to inspect and make copies of all reports and "test data" of Sellers in respect to any test made by Sellers on any of their wells. Natural shall, at its option and as often as it desires, be permitted to test any well of Sellers to determine the characteristics of the gas produced.

6. Should the gas offered for delivery by Sellers fail at any time to conform to any of the specifications in Paragraph 2 of this Article (other than subparagraph (e) thereof), Natural may at its option, and in addition to other remedy, accept delivery of the gas and itself remove any solid matter, liquid matter, hydrogen sulphide and/or sulphur in any form in excess of the amounts specified, and Sellers shall reimburse Natural for any reasonable expense incurred by Natural in effecting such removal, or for any reasonable expense otherwise incurred by Natural

by reason of the failure of the gas to conform to such specifications, all with interest at the rate of six per cent (6%) per annum, and Natural may deduct the amount of all such expense from any sums payable for gas delivered hereunder.

## ARTICLE ELEVENTH.

### British Thermal Unit Content.

1. The unit of volume for heating value determination (British thermal unit content) shall be one (1) cubic foot of dry natural gas at a temperature of sixty degrees (60°) Fahrenheit and an absolute pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch.

2. The average total heating value per cubic foot of the natural gas delivered hereunder for each day shall be determined by means of a Thomas recording calorimeter to be installed at or near the point of measurement by Natural. Such determination of the average total heating value shall be made by averaging the readings recorded for each day and the average thus obtained shall be the average total heating value per cubic foot delivered during such day. The accuracy of the Thomas recording calorimeter shall be checked at least once a week by means of a proof test of pure hydrogen gas, or by means of a test of a standard sample of natural gas, or by means of a Junkers type of flow calorimeter operated according to the method of the United States Bureau of Standards, a may be selected by Natural. The Thomas recording calorimeter shall be deemed operating properly when the total heating value as recorded by it does not vary from the total heating value of pure hydrogen gas, or from the total heating value of a standard natural gas, or from the total heating value as determined by the Junkers calorimeter by more than five (5) British thermal units per cubic

foot, according to the test made. Provided that the Thomas recording calorimeter shall be immediately adjusted to register accurately should its recording show any variance from the total heating value determined by such tests. If at any time the Thomas recording calorimeter is out of service or not operating properly for any reason, determination of total heating value shall be made at least once daily by the Junkers calorimeter. Sellers shall have the right to examine the said calorimeter equipment and test records at any reasonable hour and to have a representative present at all tests and adjustments of such calorimeter equipment.

## ARTICLE TWELFTH.

METERING—UNIT OF VOLUME.

1. Natural shall furnish, install, operate and maintain metering stations, located as provided in Article Fourth hereof, properly equipped with orifice meters and recording gauges or such other type of meter or meters of standard make and design as may be mutually agreed upon, in such manner as to accomplish the measurement of gas delivered hereunder.

2. Sellers shall have access to said metering equipment at all reasonable times, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by the employees, agents or representatives of Natural. Charts and records from such metering equipment shall remain the property of Natural. Upon request of Sellers, Natural will submit to Sellers records and charts from such metering equipment subject to return by Sellers within ten (10) days after receipt thereof, after which return the charts and records shall be kept on file for a period of five (5) years for the mutual use of both parties. At least once each month and on a date as near the first of the month as

practicable, Natural shall calibrate the said meters or cause the same to be calibrated in the presence of a representative of Sellers and the parties shall jointly observe any adjustments which are made in the meters should such adjustments be necessary. For purposes of measurement and meter calibration, the atmospheric pressure shall be assumed to be thirteen and two-tenths (13.2) pounds per square inch, irrespective of variations in natural atmospheric pressure from time to time. Natural shall give to Sellers notice of the time of all tests of meters sufficiently in advance of holding the tests so that they may conveniently have their representative present. If upon any test the metering equipment is found to be inaccurate by two per cent (2%) or more, but not otherwise, registrations thereof and any payments based on such registrations shall be corrected at the rate of such inaccuracy for any period of inaccuracy which is definitely known or agreed upon, but in case the period is not definitely known or agreed upon, then for a period extending back one-half of the time elapsed since the last day of calibration, not exceeding, however, fifteen (15) days. Following any test any metering equipment found inaccurate shall immediately be adjusted to measure accurately. If for any reason any meter/s are out of service and/or out of repair so that the quantity of gas cannot be ascertained or computed from the readings thereof, the quantity of gas delivered during the period same are out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available using the first of the following methods which is feasible:

(a) By using the registration of any check measuring equipment of Sellers if installed and registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

(c) By estimating the quantity of deliveries by deliveries during preceding periods under similar conditions when the meter was registering accurately.

3. The unit of volume for the measurement of gas delivered under this contract shall be one (1) cubic foot of gas at a base temperature of sixty degrees Fahrenheit (60°F.) and at an absolute pressure of sixteen and four-tenths (16.4) pounds per square inch, and the readings and registrations of the metering equipment herein provided for shall be computed in terms of such unit.

4. The temperature of the gas flowing through the meter shall be obtained by the use of a recording thermometer so installed that it will properly record such temperature. The average temperature recorded each day shal' be used in computing measurements for that day.

5. The specific gravity of the gas shall be determined by Natural at or near the point of metering near the outlet of the gasoline plant at least semi-weekly, and the point of metering at the compressor station at least monthly. Natural shall advise Sellers of the time at which specific gravity tests are to be made in order that Sellers may conveniently have their representative present. The Edwards type specific gravity balance or equipment acceptable to both parties shall be used.

6. All fundamental constants, observations, records and procedures involved in determining and/or verifying the quantity and other characteristics of gas delivered hereunder shall, except as otherwise specified herein, be in accordance with such standards therefor as are or may hereafter from time to time be approved or recommended by the American Gas Association, and in the absence of such standards, then such standards as are acceptable to the parties hereto.

## ARTICLE THIRTEENTH.

WARRANTY OF TITLE.

Sellers hereby warrant title to the gas sold hereunder and the right of Sellers to sell the same and Sellers warrant that all such gas is owned by Sellers free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes and other taxes. Sellers shall at all times have the obligation to make settlements for all royalties due and payments to the mineral and royalty owners under Sellers' leases as modified by any unitization agreements and other documents as may appear of record or otherwise be binding upon Sellers, and in accordance with the terms of the respective leases and to make settlements with all other persons having any interest in the gas sold hereunder, and Sellers agree to indemnify Natural and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title to the gas passes to Natural or which may be levied and assessed upon the sale hereof to Natural. In the event any adverse claim of any character whatsoever is asserted in respect to any of said gas, Natural may retain, as security for the performance of Sellers' obligations with respect to such claim under this section, the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined or until Sellers shall have furnished bond to Natural in an amount and with sureties satisfactory to Natural, conditioned for the protection of Natural with respect to such claim.

## ARTICLE FOURTEENTH.

CONTRACT SUBJECT TO LAWS AND REGULATIONS.

This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation.

## ARTICLE FIFTEENTH.

FORCE MAJEURE PROVISIONS.

1. In the event of either party being rendered unable, wholly or in part, by force majeure applying to its/their operations, to carry out its/their obligations under this contract other than to make payment of amounts due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telephone to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

2. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earth-

quakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs and/or alterations in machinery or lines of pipe, and any other cause whether of the kind herein enumerated or otherwise not within the control of the party claiming suspensions, all of which by the exercise of due diligence such party is unable to foresee or overcome.

## ARTICLE SIXTEENTH.

### ARBITRATION.

Should any dispute as to the construction of this contract or the respective rights, duties and obligations of the parties hereunder arise, the issues in dispute shall be arbitrated and determined by the person then the Senior Judge of the United States District Court for the Western District of Oklahoma, or, should he decline to act, such person/s, either one or three, as he shall, after hearing the suggestions of both parties, designate. Any arbitrator/s so appointed by the judge shall be qualified by education and training to pass on the issues in dispute; for example, if engineering questions are involved, qualified engineer/s shall be appointed, if legal questions are involved, qualified lawyer/s shall be appointed, or if the issues indicate, persons of varied training and education may be designated. Such judge or his appointees shall designate the procedure to be followed in the arbitration, which shall give both parties full opportunity to be heard. The determination by the arbitrator/s of the issues presented shall be final and conclusive, and the parties shall thereafter abide the decision made on such issues. Costs of any such arbitration shall be borne by the parties in equal proportions.

## ARTICLE SEVENTEENTH.

### OPTION TO PURCHASE.

Sellers and each of them agree that as often as they or one of them shall receive a bona fide offer from a third party for the purchase in their entirety of either or all of the (a) gas reserves, (b) gas wells thereon, (c) pipe lines, (d) plants, and (e) other property at the time used or useful for the performance of this contract, and any rights under this contract, which offer Seller/s desires to accept, such Seller/s shall, before disposing of such interest, notify Natural by registered mail of the full particulars and terms of such offer, including the name of the party making the offer and the sum offered. Should Natural, within fifteen (15) days after receipt of such notice, advise such Seller/s of its desire to purchase the interest for which offer has been made, a contract for the sale and transfer thereof by such Seller/s to Natural on the same terms and conditions otherwise available to such Seller/s shall result, which contract shall be promptly executed.

## ARTICLE EIGHTEENTH.

### MISCELLANEOUS PROVISIONS.

1. Each of the parties shall be responsible for any damage or injury to third parties or their property arising from the handling of the gas delivered hereunder during the period of its or their custody and possession.

2. Any communications or notices pertaining to this contract shall be considered as duly delivered when mailed by registered mail to the post office address of either of the parties hereto, as set out in this contract, or to such other address as either party shall designate by formal written notice.

3. This contract may be assigned by either of the parties hereto to any person, firm or corporation who shall expressly assume the obligations hereof on the part of the assignor to be performed and, in the case of assignment by Sellers or one of them, who shall acquire all of the assignor's interest in gas reserves and properties of Sellers herein referred to; but it may not otherwise be assigned without the consent of the other party hereto. Whenever any party is referred to herein, such reference shall be deemed to include the successors and assigns of such party. Provided, however, that nothing herein contained shall be construed to prevent any party hereto from pledging all or any portion of such party's property as security under any mortgage, deed of trust, or other similar lien, or from pledging this contract or any benefits accruing hereunder to the party making the pledge.

4. The term "gas", wherever used herein, shall mean natural gas. The words "herein" or "hereunder" shall, whenever the sense properly permits, refer to all provisions of this contract, rather than to the provisions of any particular Article or its subdivision.

## ARTICLE NINETEENTH.

### TERM.

1. This contract shall, unless terminated before the commencement of deliveries hereunder according to the provisions of Article Second hereof, continue and remain in effect until January 1, 1965, and as long thereafter as Sellers are able to deliver gas in paying quantities under its terms and conditions; provided, however, that Natural may, on January 1, 1965, or the first day of any year thereafter, upon one (1) year's prior notice to Sellers, cancel and terminate this contract.

2. Should Sellers fail or be unable from any cause for a period of six (6) months to deliver to Natural at least twenty-five per cent (25%) of the volumes of gas required to be delivered by this contract, Natural may at its option give notice to Sellers of its intention to cancel this contract upon a stated subsequent date not earlier than two (2) years from the date of such notice, and this contract shall terminate on the date so fixed.

Executed the day and year first above written.

"NATURAL"

NATURAL GAS PIPELINE COMPANY OF AMERICA,

By Floyd C. Brown

(SEAL) *Its President.*

Attest:

J. P. Garver

*Secretary.*

"SELLERS"

HARRINGTON & MARSH,

By (DDH) D. D. Harrington

(SM,Jr.) Stanley Marsh, Jr.

(EFM) Estelle Pariss Marsh

(TJW,Jr.) T. J. Wagner, Jr.

(IDM) Ida D. Marsh

(IMMcC) Isabel Marsh McCormick

(JLMcC) Jas. L. McCormick

(SM,Jr.) Stanley Marsh, Jr.

*Independent Executor of the Estate of Stanley Marsh, deceased.*

[1067]

## BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

| | |
|---|---|
| In the Matter of the Application of Certain Mineral Owners in Texas County, Oklahoma, for an Order Determining the Minimum Price at which Gas Produced from the Guymon-Hugoton Field may be First Purchased or Sold. | Cause CD No. 3628<br>Order No. 26096 |

## REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of Oklahoma in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, on the 20th and 21st days of February, 1952, at 10 o'clock, a.m., at which time all Commissioners were present and the case was heard.

The case was then continued to various dates and was finally heard on July 8th and 9th, 1952, and at the conclusion of the testimony on July 9th all parties announced that they had rested, the case was closed, and the matter was taken under advisement.

At all hearings the following appearances were entered: Rizley, Tryon and Sweet, E. H. Lange and C. H. Hinton appeared for Panhandle Eastern Pipe Line Company; R. M. Williams, Kenneth Heady and Cecil C. Hamilton appeared for Phillips Petroleum Company; Mark Adams appeared for Northern Natural Gas Company, C. C. Kuhne, Coleman Hayes, D. H. Culton, Warren T. Spies, B. M. Britain appeared for Natural Gas Pipeline Company; T. Murray Robinson and Dale & Dale appeared for applicant; L. T. Cramer

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appeared for Office of Price Stabilization; Joe Rolston and R. R. McCracken appeared for Cities Service Gas Company; Floyd Green, Conservation Attorney and Ferrill Rogers, Assistant Conservation Attorney, appeared for the Commission.

Now, on this the 29th day of July, 1952, the Commission being in executive session, the matter comes on for further discussion and the Commission being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the extent hereinafter set out and therefore finds as follows:

**FINDINGS**

1. That this is an application of certain mineral owners in Texas County, Oklahoma, for an order determining the minimum price at which gas in the Guymon-Hugoton Field may be first purchased or sold.

2. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law; that the cause was regularly set for hearing, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

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3. That various interested parties have filed responses to the application and answers, some of which were filed during the course of the proceedings and some of which by leave of the Commission were filed since the proceedings were closed.

4. That Mr. L. T. Cramer of the Office of Price Stabilization appeared and stated the position of that Federal Agency in respect to the application.

5. That under date of December 9th, 1946, the Commission issued its Order No. 19514, in Cause CD No. 1954, fixing the minimum price of 7¢ per thousand cubic feet of natural gas measured at a pressure base of 14.65 pounds absolute pressure per square inch for all gas taken out of the structures or formations in the Guymon-Hugoton Field, Texas County, Oklahoma; that said order was appealed to the Supreme Court of Oklahoma and the Supreme Court of the United States, both of which courts upheld the order of this Commission fixing said price and upheld the jurisdiction of the Corporation Commission to fix the price of gas in this particular field for the purpose of conservation and the protection of correlative rights.

6. That since the Commission issued its Order No. 19514, the general increase in commodity prices and the use value of gas have increased throughout the Guymon-Hugoton Field and elsewhere to the point that the production and sale of said gas from said field at any price less than 9.8262¢ measured at the wellhead at a pressure base of 14.65 pounds absolute per square inch, constitutes and causes waste, both physical and economic.

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7. That the taking of natural gas from the Guymon-Hugoton Field at prices and under terms and measurement now prevalent in said field results in and causes:

a. Economic waste of a great natural resource, to-wit: natural gas;

b. Actual physical waste of natural gas;

c. Loss to the royalty owners in said field;

d. Loss to the State of Oklahoma in revenues in the form of gross production taxes;

e. Inequitable taking of natural gas from the common source of supply involved.

f. Discrimination against various producers in the field.

8. That the production of natural gas in the Guymon-Hugoton Gas Field is in excess of the market demand.

9. That the conditions which existed in the Guymon-Hugoton Field after it issued its Order No. 19514 have generally continued to prevail within said field, except that the price of 7¢ for gas therefrom is no longer adequate to prevent waste and protect the correlative rights of the parties therein and insure the development of and production from all of said common sources of supply during the time that facilities for the transportation from said Field to the market will be available.

10. That the representative of the Office of Price Administration stated in the record that a wellhead price for gas in said field of 9.8262¢ per thousand cubic feet measured at a pressure base of 14.65 pounds absolute per square inch will not

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violate the orders of the Office of Price Administration.

11. That only a small portion of the gas produced in said Field is actually sold or delivered at the wellhead and in all those instances where such sale and delivery does not occur at the wellhead, it will be necessary for the producer to determine whether or not it is realizing the equivalent of the minimum price fixed by this order; that much of the gas which is not sold at the wellhead is processed by the producer for the extraction of liquid hydrocarbons and the residue then sold during or at the conclusion of gathering; that such processing and sale during or at the conclusion of gathering constitutes the performance of a valuable service to the purchaser, in that said processing conditions said gas for pipeline transmission, often including dehydration or desulphurization or both, and that the residue from numerous wells is delivered at a central point, thus eliminating the necessity for the purchaser to make substantial in-

vestments and incur substantial expenses in gathering said gas; that the liquid hydrocarbons extracted by said processing are of value to the producer but that such value fluctuates from time to time depending upon competitive conditions not within the control of such producer; that, on the average and considering the fluctuations in value of said liquid hydrocarbons, the value realized by such producer from the sale or use of said liquid hydrocarbon does not exceed the cost of gathering and processing said gas, including a reasonable allowance for depreciation and return on investment;

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and that such producer, to realize a price for such gas equivalent to and not less than 9.8262 cents per thousand cubic feet at the wellhead, must receive for such processed gas a price of not less than 9.8262 cents per thousand cubic feet measured at a pressure base of 14.65 p.s.i.a. at a temperature of 60° F.

12. That residue gas containing 950 BTU per cubic foot saturated with water at standard conditions has a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field, but that residue gas having less than 950 BTU per cubic foot saturated with water at standard conditions does not have a value for normal uses equal to that of the average gas produced from the Guymon-Hugoton field and that, therefore, if such residue gas contains less than 950 BTU per cubic foot saturated with water at standard conditions, the minimum price for such residue gas should be in the proportion that the BTU content of such gas bears to 950 BTU per cubic foot.

13. That for the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of

natural gas from the reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton Field, at a price less than 9.8262¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

14. That a minimum price order cannot be made fully effective and discrimination prevented without a means provided for

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determining the manner in which the amount realized for gas by producers operating gathering and processing plants.

## ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no gas shall be produced from any well located in the Guymon-Hugoton Field of Oklahoma except at a price of not less than 9.8262¢ per thousand cubic feet if sold at the wellhead or on the lease or drilling unit from which produced, or a price equivalent to not less than 9.8262¢ per thousand cubic feet at the wellhead if sold off the lease or drilling unit or otherwise utilized. If the gas is sold during or upon conclusion of gathering without being processed for the extraction of liquid hydrocarbons, the price shall be not less than 9.8262¢ per thousand cubic feet plus the reasonable cost of gathering. If the gas is processed for extraction of liquid hydrocarbons and sold during or at the conclusion of gathering, the price for the residue gas shall not be less than 9.8262¢ per thousand cubic feet.

2. The minimum price specified above for the sale of residue gas after processing during or upon conclusion of gathering con-

templates that said residue gas will contain at le st 950 British Thermal Heating Units per cubic foot of gas saturated with water vapor at standard conditions. In the event such residue gas contains less British Thermal Heating Units than specified above, the minimum price for such gas shall be in the proportion that the

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British Thermal Heating Units of such gas is to 950 per cubic feet.

3. For the purpose of this order a cubic foot of gas shall mean a volume of gas contained in one cubic foot of space measured at a pressure of 14.65 pounds per square inch absolute at a temperature of sixty degrees Fahrenheit (60° F.).

4. This order shall become and be effective the 1st day of August, 1952.

DONE AND PERFORMED by the Corporation Commission of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 29th day of July, 1952.

CORPORATION COMMISSION OF OKLAHOMA

S/REFORD BOND, Chairman
S/RAY O. WEEMS, Vice-Chairman
S/RAY C. JONES, Commissioner

ATTEST:

S/TOM McMURRAY
Secretary

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**(Item B)**

## WESTERN UNION TELEGRAM

November 10, 1954

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
441 G Street, N.W.
Washington, D. C.

Natural Gas Pipeline Company of America is advised that Dorchester Corporation on October 28, 1954 filed as its purported rate schedule, pursuant to Section 154.92 of the Commission's rules, a contract dated as of December 1, 1946 between Natural and Dorchester's predecessor, Harrington and Marsh, together with a copy of Order 26096 of the Corporation Commission of Oklahoma, whereby, effective August 1, 1952, such Commission undertook to establish a minimum price of 9.8262¢ per Mcf (at a 14.65 pound pressure base) for all natural gas produced in the Guymon Hugoton Field of Oklahoma and for all residue gas remaining after its processing and sold at the outlet of a gasoline plant, which order applies to Natural as to residue gas purchased at the outlet of a gasoline plant from Dorchester Corporation.

Natural denies that such order of the Corporation Commission of Oklahoma is valid as to its purchases of residue gas from Dorchester at the outlet of that company's gasoline plant and denies that the same constitutes an amendment of its said contract with Dorchester Corporation within the meaning of Order No. 174-A of your Commission. To the contrary Natural alleges that on June 7, 1954 the contract price and the legal price as contemplated

by Order 174-A was seven cents per Mcf measured on a 16.4 pound pressure base as provided under Section 6 of such contract, and that it has never paid the price prescribed by said Order 26096 save under compulsion and duress of said order and with written protest and full reservation of its right to recover payment in excess of the price provided in Section 6 of the contract. Natural further alleges that the validity of such Order 26096 as applied to the sales of gas to Natural is the subject matter of an appeal to the Supreme Court of the United States in Cause No. 321, October Term 1954, and that on November 8, 1954 that Court noted its probable jurisdiction in the cause.

Natural therefore protests the filing by Dorchester of such minimum price order in connection with its purported tariff as not being in compliance with Order 174-A, and particularly Section 154.92 thereof, and otherwise because such filing is in derogation of Natural's rights in the premises. Natural respectfully requests that the Commission reject the filing of Order 26096 as a part of the tariff or, in the alternative and in the event it shall accept the same for filing, that it accept the same solely on condition that Dorchester be required to hold in separate fund any payments made by Natural in excess of the price provided in Section 6 of the contract, subject to refund in the event it shall be ruled by the Supreme Court of the United States that said Order 26096 is not validly imposed in respect to the purchase of gas by Natural from Dorchester under the provisions of said contract.

NATURAL GAS PIPELINE COMPANY OF AMERICA

By George P. Garver, Vice President

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(Item C)

**DORCHESTER CORPORATION**
**602 Fidelity Union Life Building**
**Dallas, Texas**

November 17, 1954

Mr. Leon M. Fuquay
Federal Power Commission
Washington, D. C.

Dear Sir:

Dorchester desires to file herewith a "supplemental statement" in support of its initial rate filing heretofore made with the Commission on October 28, 1954 and in answer to Natural Gas Pipeline Company of America's telegram to the Commission of November 10, 1954.

In compliance with Order No. 174-A of the Commission, Dorchester Corporation filed as its rate under its original "Gas Rate Schedule No. 1," a price of 9.8262¢ per MCF at a pressure base of 14.65 p.s.i.a. This rate applies to the gas produced from its leases in the Guymon-Hugoton Field, Texas County, Oklahoma and sold to Natural. Such price was based on the Oklahoma minimum price in effect on June 7, 1954. To prevent physical and economic waste, the Corporation Commission of Oklahoma on December 9, 1946 fixed a minimum price of 7¢ per MCF for all gas taken out of the structures or formations in the Guymon-Hugoton Field and on July 29, 1952 such Commission entered Order No. 26906 fixing such minimum price at 9.8262¢ per MCF to be effective on and after August 1, 1952. The Commission found that the production and sale of gas

from the Guymon-Hugoton Field at a price less than 9.8262¢ per thousand cubic feet would cause:

(a) Economic waste of a great natural resource, to wit, natural gas;

(b) Physical waste of natural gas;

(c) Loss to royalty owners in said field;

(d) Loss to the State of Oklahoma of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination between producers in the field;

A copy of such order is attached hereto, and the Commission's attention is respectfully directed to the fact findings therein.

The price of 9.8262¢ was the price in effect and the price that was being paid to Dorchester's predecessor in interest on June 7, 1954. Dorchester acquired the properties of Panoma Corporation on July 1, 1954. Natural had paid Panoma the price of 9.8262¢ from the effective date of the Commission's Order, paying same under a letter of protest dated September 9, 1952.

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As is shown by the billings for recent months attached to Dorchester's "Gas Rate Schedule No. 1," the statement of Natural to Panoma covering June 7, 1954 shows without question the price of 9.8262¢ per MCF. Also the statement of Natural to Dorchester Corporation for gas sold and delivered during July, 1954 shows a price of 9.8262¢ per MCF. In conformity with Order No. 174-A, this is the effective rate that was being charged and was in effect on June 7, 1954 and is the initial rate filed by Dorchester under such Order. Dorchester has paid its royalty owners and has paid the Oklahoma severance tax on the

basis of the Oklahoma minimum price of 9.8262¢, which it is required to do in accordance with the law of the State of Oklahoma. It is very doubtful that any of the sums so paid to royalty owners or to the State of Oklahoma can be recovered by Dorchester. Obviously this situation cannot continue. Dorchester is currently violating the Oklahoma law by removing gas from the structure and receiving a price from Natural therefor which is less than the Oklahoma minimum price law.

Prior to the acquisition of the properties by Dorchester there was incurred in the purchase thereof a loan, from the Metropolitan Life Insurance Company and the Mutual Life Insurance Company of New York, in the aggregate amount of $35,000,000. The basis for the amortization of principal and payment of interest on such loan was a minimum price of 9.8262¢ per MCF for gas produced in Oklahoma. Natural has refused to pay to Dorchester the price of 9.8262¢ per MCF and has made payments at the rate of 7¢ per MCF at a pressure base of 16.4 p.s.i.a. (6.2¢ per MCF at a pressure base of 14.65 p.s.i.a.). This is the price provided for in the contract originally entered into between Natural and Harrington and Marsh dated as of December 1, 1946 as amended and supplemented by amendment dated October 1, 1949 and letter dated February 25, 1948.

Because of Natural's failure to pay such minimum price, there will not be sufficient funds to meet the interest payments of $875,000 which are due and payable on such loan on January 1, 1955. At the rate of 6.2¢ per MCF there will be a deficiency of funds available at such time of approximately $340,000. On July 1, 1955 a principal payment in the amount of $500,000 is due on such loan and unless Dorchester's rate of 9.8262¢ per MCF is accepted and sustained, there will only be available at such time approximately $25,000 to pay on such principal payment. Thus the loan will be in default by approximately $475,000 with respect to the first payment of principal.

The minimum price of 9.8262¢ per MCF was arrived at by the Oklahoma Commission after a full hearing with respect to what minimum price would be required to prevent physical and economic waste. Irrespective of the jurisdiction and power of this Commission to prescribe a different price, this Commission should not reject rate filings based upon applicable State minimum price orders in effect on June 7, 1954. Such prices were being paid by all purchasers to all producers in the particular fields affected. The fact that payments made have been made by one or more purchasers under technical protest does not affect the basic price structure existing in such fields upon which obligations have been made and expenditures incurred in reliance upon such minimum price orders.

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The Commission in its Opinion No. 275 in the *Matter of the Michigan Wisconsin Pipeline Company*, as clarified by its order issued August 17, 1954, recognized the validity and propriety of the Oklahoma minimum price law, which is the basis of Dorchester's initial rate filing. The Commission should recognize the State minimum price laws in effect on June 7, 1954 so as not to create a conflict between the applicable tariff of a producer on file with the Commission under Order No. 174-A and the minimum price which the State requires the producer to receive before he may produce the gas from the structure. The Commission should not, without full study of the factors which induced the State Commission to fix a particular minimum price law, set aside and hold for naught such Orders. The question of jurisdiction is not at issue. It is assumed in this connection that the Commission has full jurisdiction over the price at which Dorchester is selling to Natural. The Commission should weigh carefully the fact that a responsible State Commission has found that a price of less than 9.8262¢ is wasteful and un-

economic. Consequently only after full hearing and consideration should the Commission disturb existing State minimum price laws. It must be presumed that the State Commissions were acting in good faith and in a bona fide attempt to conserve and prevent waste of natural gas in entering such orders. Unless and until the Commission holds full and complete hearings with respect thereto and determines that the State Commissions were in error in fixing the minimum prices so fixed by them, the Commission should accept the applicable minimum prices as the rates in effect on June 7, 1954. The existing tariffs of Natural include within their structure payment to Dorchester at the rate of 9.8262¢ per MCF and not at the rate of 6.2¢ per MCF.

Natural has requested, in the alternative, that if Dorchester's tariff is accepted for filing that it be accepted solely on the condition that Dorchester be required to hold in a separate fund any payments made by Natural in excess of 6.2¢ per mcf pending determination by the Supreme Court of the validity of Order No. 26096.

As shown above, this will not solve Dorchester's financial problems nor would any such requirement by the Commission give proper effect to Dorchester's original rate filing in accordance with the Natural Gas Act, or give proper credence to the findings by the Oklahoma Commission. It is submitted that the Oklahoma minimum price law of 9.8262¢ per mcf is just and reasonable and is greatly below the current price being paid by Natural and others in the same area for additional volumes of gas. The issue before the Commission is whether the Commission will at this time disregard the findings of the Oklahoma Commission that a minimum price of 9.8262¢ is necessary to prevent physical and economic waste. If such price is necessary to prevent waste, then this Commission should not overturn such order without reference to whether or not jurisdiction

existed in the State Commission to validly issue such order. It is respectfully submitted that the original rate filing of Dorchester is made in full conformity with Order No. 174-A of the Commission and consequently is not subject to rejection or suspension.

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A copy hereof has been furnished to Natural and to the Oklahoma Corporation Commission.

Respectfully submitted.

JOHN. A. CRICHTON

John A. Crichton
President, Dorchester

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STATE OF NEW YORK )
) SS
COUNTY OF NEW YORK )

Before me, the undersigned authority, this day personally appeared Mr. John A. Crichton who after being duly sworn said that the facts and matters set forth in the foregoing statement are true to the best of his information, knowledge and belief.

JOHN A. CRICHTON

Subscribed and sworn to before me this 17th day of November, 1954.

WILLIAM B. SNYDER
Notary Public, State of New York
No. 60-3758150
Qualified in Westchester County
Term Expires March 30, 1955

WILLIAM B. SNYDER
Notary Public

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**(Item D)**

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

In the Matter of
Dorchester Corporation

ORDER ALLOWING RATE SCHEDULE AND SUPPLEMENTS TO TAKE EFFECT

Dorchester Corporation (Dorchester), on October 28, 1954, tendered for filing, pursuant to Order No. 174-A issued August 6, 1954, in Docket No. R-138, the basic contract and certain supplements providing for the sale in interstate commerce to Natural Gas Pipeline Company of America (Natural) of natural gas produced in Guymon-Hugoton Field, Texas County, Oklahoma. The tendered filings have been respectively designated as Dorchester Corporation FPC Gas Rate Schedule No. 2, and Supplements Nos. 1 through 3 thereto.

Gas Rate Schedule No. 2 is a contract dated December 1, 1946, between Harrington & Marsh, a predecessor of Dorchester, and Natural, providing a price of 7c per Mcf at 16.4 psia for gas purchased by Natural under the basic contract. Supplement No. 1 thereto is a letter dated February 25, 1948, from Natural to Harrington & Marsh agreeing to a modification of the basic contract. Supplement No. 2 is an amendment dated October 1, 1949, between Natural and Panoma Corporation (Panoma) of the basic contract. Panoma is also a predecessor of Dorchester, having succeeded to the rights of Harrington &

Marsh. Neither supplement, however, altered the basic contract price for the natural gas.

Supplement No. 3 is a copy of Order No. 26096 of the Corporation Commission of the State of Oklahoma entered July 29, 1952, in its Cause CD No. 3628 fixing a minimum price of 9.8262¢ per Mcf at the wellhead at a pressure of 14.65 psia for gas produced from any well located in Guymon-Hugoton Field. Such order of the Corporation Commission of the State of Oklahoma applies to all gas produced in Guymon-Hugoton Field, Texas County, Oklahoma, including residue gas purchased by Natural at the outlet of a gasoline plant operated by Dorchester. On the basis of such order, Dorchester claims that the effective price to Natural as of June 7, 1954, is 9.8262¢ per Mcf at 14.65 psia.

Natural, on November 10, 1954, by telegraphic advice protested Dorchester's filing of the minimum price order, stating in part:

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"Natural denies that such order of the Corporation Commission of Oklahoma is valid as to its purchases of residue gas from Dorchester at the outlet of that company's gasoline plant and denies that the same constitutes an amendment of its said contract with Dorchester Corporation within the meaning of Order No. 174-A of your Commission. To the contrary Natural alleges that on June 7, 1954, the contract price and the legal price as contemplated by Order 174-A was seven cents per Mcf measured on a 16.4 pound pressure base as provided under Section 6 of such contract, and that it has never paid the price prescribed by said Order 26096 save under compulsion and duress of said order and with written protest and full reservation of its right to recover payment in excess of the price provided in Section 6 of the contract. Natural further alleges that the validity of such Order 26096 as applied to the sales of gas to Natural is the

subject matter of an appeal to the Supreme Court of the United States in Cause No. 321, October Term 1954, and that on November 8, 1954, that Court noted its probable jurisdiction in the cause."

Natural requests that the Commission reject the filing of Supplement No. 3 as a part of Dorchester's tariff or, in the alternative and in the event the Commission shall accept Supplement No. 3 for filing, that the Commission accept such supplement solely on condition that Dorchester be required to hold in separate fund any payments made by Natural in excess of the price of 7¢ per Mcf at 16.4 psia provided in Section 6 of the Rate Schedule No. 2, subject to refund in the event it shall be ruled by the Supreme Court of the United States that Order No. 26096 is not validly imposed in respect to the purchase of gas by Natural from Dorchester.

The natural gas sold by Dorchester to Natural pursuant to the foregoing rate schedule and supplements thereto is transported and sold in interstate commerce for resale for ultimate public consumption. Accordingly, such sale and rate schedule and supplements governing such sale are subject to the jurisdiction of the Commission.

In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.

To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the

Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise.

[1093]

The Commission *finds:*

(1) Dorchester Corporation is a "natural-gas company" within the meaning of the Natural Gas Act, and its sale of gas to Natural Gas Pipeline Company of America under FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto is a sale of gas for resale for ultimate public consumption.

(2) FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto filed by Dorchester Corporation on October 28, 1954, should be accepted for filing, subject to the condition specified herein.

The Commission *orders:*

(A) FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto filed by Dorchester Corporation on October 28, 1954, be and the same are hereby accepted for filing subject to the express condition specified in (B) hereof.

(B) The acceptance for filing of the aforesaid rate schedule and supplements thereto is subject to the express condition that such filing is without prejudice to any claims or contentions which have been made by or for Dorchester Corporation or by Natural Gas Pipeline Company of America in the litigation pending before the Supreme Court of the United States in Cause No. 321, October Term 1954.

(C) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7(c) of the Natural Gas Act; nor shall it be construed as constitut-

ing approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate, nor shall this be deemed as recognition of any contractual right or obligation affecting or relating to such service or rate.

(D) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted, by or against Dorchester Corporation.

By the Commission.

Leon M. Fuquay,
Secretary.

Adopted: November 24, 1954
Issued: November 30, 1954

[1103]

(Item F)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby and Frederick Stueck.

In the Matter of Dorchester Corporation } Docket No. G-4907

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Dorchester Corporation (Applicant), an independent producer with its principal place of business in Dallas, Texas, filed, on November 17, 1954, an application for a certificate of public convenience and necessity, pursuant to Section 7(c) of

the Natural Gas Act, authorizing the Applicant to sell natural gas as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application.

Applicant sells natural gas produced in the Hugoton Field, Texas County, Oklahoma, to Natural Gas Pipeline Company of America, for resale in interstate commerce.

Pursuant to due notice, a public hearing was held in Washington, D. C., on June 14, 1955, respecting the matters involved in and the issues presented by the application. No protest to the application has been received.

The Commission *finds:*

(1) Applicant, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas hereinbefore described, as more fully described in the application, is made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Applicant, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

[1104]

(4) The sale of natural gas by Applicant, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the

public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Applicant having requested the omission of the intermediate decision procedure, and all the requirements of the provisions of Section 1.32(b) [18 CFR 1.32(b)] of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

The Commission *orders:*

(A) A certificate of public convenience and necessity be and is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the continued operation of any facilities, subject to the jurisdiction of the Commission, used for the sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate shall be accepted in writing and under oath by Applicant within 30 days from the issuance of this order.

(C) The certificate is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the service herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or

against the Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any further proceeding or objection relating

[1105]

to the operation of any price or related provision in the gas purchase contracts herein involved.

By the Commission.

Leon M. Fuquay,
Secretary.

Adopted: June 22, 1955
Issued: June 27, 1955

[1106]

In the Matter of )
) Docket No. G-4907
Dorchester Corporation )

DIGBY, Commissioner, *concurring:*

I concur in the order granting a certificate of public convenience and necessity to sell natural gas. I object to any reference in the order concerning the issuance of a certificate of public convenience and necessity for the facilities of the independent producer or gatherer of gas.

A certificate of public convenience and necessity is neither required nor properly issued for construction and operation of facilities of a producer or gatherer. The action of a majority of this Commission issuing a certificate for facilities is improper for it represents an assertion of power denied to us by Congress.

We have recognized the absence of power over facilities when, in Order No. 174 and Order No. 174-A, we failed to provide any procedure whereby application could be made for a certificate

authorizing their construction and operation. We did promulgate procedural rules to enable filing of applications for certificates authorizing a sale or transportation. There was not even a suggestion that at some later time we would authorize or require authorization for construction and operation of facilities.

The action heretofore taken, insofar as it made no provision with respect to facilities, was wholly consistent with the declarations of the Supreme Court in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, 337 U. S. 498, 505; *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581, 598; *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682, 690–691, and *Phillips Petroleum Company* v. *State of Wisconsin*, 74 Sup. Ct. 794, 797–798. The language of the Court in these cases is clear and unambiguous. In *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company, supra*, the Court stated that the "natural and clear meaning" of production or gathering contained in Section 1(b) of the Act encompassed "the producing properties and gathering facilities of a natural-gas company." In *Colorado Interstate Gas Co.* v. *Federal Power Commission, supra*, the Court stated that the production or gathering exemption applies to the "physical activities, facilities and properties used in the production and gathering of natural gas." In *Interstate Natural Gas Company* v. *Federal Power Commission, supra*, the Court stated that effect must be given to the exemption of producing and gathering, and indicated clearly that facilities, properties and activities of a producer and gatherer were exempted. The Court, in *Phillips Petroleum Company* v. *State of Wisconsin, supra*, held only that a sale in interstate commerce for resale was not within the exemption of Section 1(b). The discussion with respect to facilities and the recitation of the above-cited cases represents clear recognition of the intended scope and effect of the exemption as regards facilities.

The issue to be resolved is whether the Natural Gas Act requires that a certificate of public convenience and necessity issue for construction and operation of the facilities necessary to effect a sale by a producer or gatherer in interstate commerce for resale. The issue is not whether a sale of gas in interstate commerce for resale can be made without facilities. It cannot be doubted that facilities necessary to effect a sale of natural gas in interstate commerce are facilities used in interstate commerce. Recognition of this fact cannot, however, create power in this Commission to issue, much less to require, certificates authorizing construction and operation of such facilities.

Date filed: June 22, 1955 S. L. DIGBY
Date of Issuance: June 27, 1955 Commissioner

[1107]

(Item G)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

DECISION

In the Matter of )
) Docket No.
Natural Gas Pipeline Company of America) G-2302

IN A PROCEEDING CONCERNING THE LAWFULNESS OF CERTAIN REVISED TARIFF SHEETS, FILED BY NATURAL GAS PIPELINE COMPANY OF AMERICA, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4(e) OF THE NATURAL GAS ACT

Filed: January 26, 1955 Glen R. Law
Issued: Jan. 27, 1955 Presiding Examiner

* * *

[1126]

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or upon its own motion, as provided by its Rules of Practice and Procedure, that:

* * *

[1127]

(G) Whenever, during the effective period of the rates and charges herein ordered or approved, Natural shall receive any refunds (a) from Texas Illinois on account of that company's controversy with the La Gloria Area Operators, (b) from Panoma Corporation, or (c) from Colorado Interstate Gas Company, on account of natural gas delivered by any of said three companies during the said effective period of such rates and charges, then and in that event Natural shall refund to its utility customers such amounts and shall file with the Commission any further changes in its gas tariff, which may become necessary and appropriate, by reason of any reduction of rates and charges by any of said three companies, giving, however, due consideration to any Federal or State income taxes which may be attributable thereto.

* * *

[1128]

**(Item H)**

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

In the Matter of

Natural Gas Pipeline Company of America } Docket No. G-2302

ORDER MODIFYING AND AFFIRMING AS MODIFIED INITIAL DECISION OF PRESIDING EXAMINER

* * *

[1133]

Upon consideration of the entire record in these proceedings, including the briefs, the initial decision of the Presiding Examiner, and the exceptions filed, the Commission *orders:*

* * *

[1135]

"(G) In the event Natural shall receive any refunds (a) from Texas Illinois on account of that company's controversy with the La Gloria Area Operators, (b) from Panoma corporation, or (c) from Colorado Interstate Gas Company, or any of them, on account of natural gas delivered by any of the said three companies, Natural forthwith upon receipt of any such refund shall submit to the Commission for its approval five copies of a plan in writing, setting forth a detailed statement of the amount of each proposed refund; to whom the refund is proposed to be made and method of computation thereof; and a showing in the event the proposed recipient is a utility customer, that such utility customer is entitled to receive and retain the proposed refund and Natural shall file with the Commission any further changes in its FPC Gas Tariff, First Revised Volume No. 1, or any superseding volume, which may become necessary and appropriate, by any reduction of rates and charges of said three companies."

# THE FEDERAL POWER COMMISSION

DORCHESTER CORPORATION

SUPPLEMENT NO. 4 TO FPC
GAS RATE SCHEDULE NO. 2

SALE OF GAS TO NATURAL GAS
PIPELINE COMPANY OF AMERICA

FROM GUYMON-HUGOTON FIELD
TEXAS COUNTY, OKLAHOMA

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

SUPPLEMENT NO. 4 TO
DORCHESTER CORPORATION'S
FPC GAS RATE SCHEDULE NO. 2

On October 28, 1954, Dorchester Corporation (Dorchester) tendered for filing, pursuant to Order No. 174-A, the basic contract and certain supplements providing for the sale to Natural Gas Pipeline Company of America (Natural) of natural gas produced in the Guymon-Hugoton Field, Texas County, Oklahoma. The tendered filings were respectively designated by the Commission as Dorchester Corporation FPC Gas Rate Schedule No. 2, and Supplements Nos. 1 through 3 thereto, and accepted for filing by order of the Commission dated November 30, 1954.

Dorchester files herewith, pursuant to §154.94 of Subchapter E of the Commission's Regulations under the Natural Gas Act, a change in such rate schedule and the rate to be effective hereunder shall be:

10¢ per thousand cubic feet, measured at a pressure base of 14.65 psia at a temperature of 60° Fahrenheit.

During any day when the gas delivered contains on the average nine hundred sixty (960) British thermal units, or more, per cubic foot, measured as provided in Article Eleventh of Dorchester's FPC Gas Rate Schedule No. 2, the foregoing price shall be increased or decreased in direct proportion as such British thermal unit content varies from nine hundred sixty-five (965) units per cubic foot; during any day when the gas delivered contains on the average less than nine hundred sixty (960) and more than nine hundred fifty (950) British thermal units per cubic foot, such price shall be reduced by ten per cent (10%); during any day when the gas delivered contains on the average less than nine hundred fifty (950) British thermal units per cubic foot, and is accepted by Natural, such price shall be reduced by twenty per cent (20%).

All other terms and conditions of Dorchester's FPC Gas Rate Schedule No. 2, and Supplements Nos. 1 through 3 thereof, not in conflict with the foregoing shall remain in full force and effect.

It is proposed that such filing be made effective on the date of filing hereof and, accordingly, the Commission, pursuant to §154.98, is hereby requested to enter an order providing that such change in rate schedule shall be effective on less than thirty days' notice and

shall become effective on the date of filing hereof. The facts as hereinafter set forth will amply justify and show good cause for such request.

A comparative statement of sales made and revenues thereunder by months under the presently effective rate schedule of 9.8262¢ per Mcf, under the contract rate of 6.2¢ per Mcf, and under the proposed changed rate schedule for the twelve months immediately preceding and for the twelve months immediately succeeding the proposed effective date of the rate schedule tendered for filing are as shown on the Exhibit attached hereto and made a part hereof. Actual data has been used wherever possible and estimates are designated and explained. There is only one customer and one delivery point involved in such proposed change in rate.

In its order issued on November 30, 1954, allowing the Gas Rate Schedule No. 2 with Supplements 1, 2 and 3 thereto to become effective, the Commission stated:

> "In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia

is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954, for decision.

"To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

and the Commission ordered:

"The acceptance for filing of the aforesaid rate schedule and supplements thereto is subject to the express condition that such filing is without prejudice to any claims or contentions which have been made by or for Dorchester Corporation or by Natural Gas Pipeline Company of America in the litigation pending before the Supreme Court of the United States in Cause No. 321, October Term 1954."

Thus, the Commission by its order has made the validity of Dorchester's present rate of 9.8262¢ depend upon the action of the Supreme Court of the United States in Cause No. 321, October Term 1954. Counsel in such

case have advised that the probabilities are that this case will not be set for submission prior to April, 1955, and that the earliest date that a decision could reasonably be expected to be handed down would be in June of 1955.

As was pointed out in the Supplemental Statement filed with the Commission under date of November 17, 1954, prior to the acquisition of the properties by Dorchester, there was incurred in the purchase thereof a loan from the Metropolitan Life Insurance Company and The Mutual Life Insurance Company of New York in the aggregate amount of $35,000,000. The basis for the initial amortization of principal and the payment of interest on such loan was a price of not substantially less than 10¢ for gas produced in Oklahoma, which price is only two-thirds of the price being paid by Natural for new reserves in the area and materially below the price being paid by other purchasers in the area. The 10¢ rate was considered to be the very minimum rate that could be applicable under the circumstances. The rate of 9.8262¢ per Mcf is included within Natural's

presently filed tariffs and is being collected by Natural from its customers. There is an interest payment of $875,000 due and payable on such loan on January 1, 1955. Even at an effective rate of 9.8262¢ per Mcf from July 1, 1954, to such time, there will be a small deficiency in funds available to pay such interest. At the rate of 6.2¢ per Mcf, there will be a deficiency of funds available at such time of approximately $340,000.

On June 1, 1955, a principal amount of $500,000 is due on such loan and if the contract rate of 6.2¢ were to be the rate in effect until such time, there would only be available funds in the amount of $25,000 to apply on such principal payment. Thus, the loan would be in default in an amount of approximately $475,000 with respect to the first payment of principal. Since acquisition of the properties on July 1, 1954, Dorchester has been squeezed between payments by Natural at the 6.2¢ rate and the requirement by royalty, overriding royalty and joint interest owners that they be paid at the rate of 9.8262¢ and the requirement of the State of Oklahoma that severance taxes be calculated and paid at the rate

of 9.8262¢. Such payments are currently being paid at the rate of 9.8262¢ and Dorchester is virtually without any effective remedy to protect itself with respect to these payments.

Dorchester, therefore, must have a firm rate effective as of the earliest possible date so that it may meet its obligations to royalty, overriding royalty and joint interest owners and the State of Oklahoma and to be in a position to substantially, if not fully, meet the interest and principal payment requirements on the loans which burden the leasehold estate.

The contract rate provided for in the basic contract dated December 1, 1946, has not been in effect except for a very short period in the beginning of the contract. The first Oklahoma minimum price order was issued on December 9, 1946, fixing the minimum price at 7¢ per Mcf and Order No. 26096, fixing the price at 9.8262¢, has been in effect since July 29, 1952. Dorchester would prefer to agree with the purchaser at arm's length upon a just and reasonable rate but absent such agreement, since the assertion of jurisdiction by the

Commission over Dorchester, it is encumbent upon the management of Dorchester and their duty to take the initiative in proposing a just and reasonable rate in lieu of the unjust, unreasonable and discriminatory rate presently provided for in the basic contract. Pennsylvania Water & Power Company, et al v. Consolidated Electric Light & Power Co., 184 F. 2d 552.

Dorchester has filed herewith the lowest possible rate that it can presently receive for such gas without there being a complete default on said loan and a foreclosure by the mortgage holder. This rate is applied for not because it is the highest rate that is just and reasonable, but because it is the very lowest rate that Dorchester can possibly survive with and is a rate which the Commission can presently allow to go into effect without suspension and without the necessity for any increase in the presently existing rates of Natural. The prices which Natural is paying others for gas and the current fair market price of gas would fully substantiate and justify a just and reasonable rate of at least 15-1/2¢ per Mcf. If in the future Dorchester were required to repay or to refund to Natural any part of the 9.8262¢

to be collected from July 1, 1954, the date upon which Dorchester acquired the properties, Dorchester would require a substantial increase in the 10¢ rate.

THE 10¢ RATE IS SUBSTANTIALLY BELOW NATURAL'S PURCHASES FROM OTHERS AND CURRENT PRICES IN THE GUYMON-HUGOTON FIELD

There is included herewith a map of the Guymon-Hugoton Area containing information on current contracts in this area. The points of delivery under the various contracts involved are shown by numbers on the map. The proposed rate of 10¢ per Mcf is a much lower rate than is currently being paid in the Guymon-Hugoton Field and surrounding areas for the purchase of much smaller volumes of gas. There is involved in this sale an average daily quantity of 76,000 Mcf. As is shown on the enclosed map of the Guymon-Hugoton Field area, sales and deliveries of gas in the immediate area of Dorchester's leases are made at prices ranging from 9.8262¢ to 15-1/2¢ per Mcf. The contracts involve much smaller daily deliverability and reserves than is available and dedicated to Natural under the basic contract.

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is photographed on the

last Card

In the Greenwood area (Fig. 9 on map), Colorado Interstate Gas Company sells gas to Natural at 15¢ per Mcf. This gas is delivered at the same compressor station of Natural where Dorchester's gas is first delivered into Natural's custody.

Natural has recently entered into a contract with R. H. Fulton for gas produced and delivered at the wellhead in Hansford County, Texas, some 10 miles further south of the location as shown by Fig. 11 in the margin of the map. Natural is paying a starting price for this gas of 15-1/2¢ per Mcf. The contract further provides for an escalation of 1¢ per Mcf each five years. Natural pays this price for gas without dehydration or other preparation for transmission.

Natural has entered into a contract with Oil Drilling, Inc., et al, which is on file with the Commission under Docket No. G-4280 for the purchase of gas from Jack and Wise Counties, Texas, which area is some 250 miles southeast of the Guymon-Hugoton Field. The starting price under this contract is 15¢, less a gathering charge of approximately 1¢ per Mcf. This purchase involves approximately 50 million feet a day. The gas

sold by Dorchester is gathered by Dorchester and delivered at one central point.

Dorchester's predecessor in interest, Panoma Corporation, sold and delivered to Natural an additional volume of gas which was not covered by the basic contract. The negotiated and agreed upon price between the parties for this gas was 12.6506¢ at 16.4 psia (11.3002¢ per Mcf at 14.65 psia). This supplemental volume of gas was being sold and delivered on June 7, 1954, and the balance thereof has since been delivered to Natural by Dorchester.

Texas Illinois, a wholly owned subsidiary of Natural, purchases gas in Texas in Railroad Commission District No. 3 at a price of 15¢ per Mcf at a pressure base of 14.65 psia.

Cities Service Gas Company is paying 11¢ per Mcf at 14.65 psia under current contracts entered into in this area.

Northern Natural Gas Company pays American Gas Company 15¢ per Mcf at 14.65 psia (Fig. 7 on map) for wellhead production. It pays Hugoton Plains Oil and Gas Company 9.8262¢ on 14.65 psia pressure base (Fig. 2 on map) for gas at field pressure. Northern pays Cabot Carbon Company (Fig. 6 on map) 15¢ per Mcf at a pressure base of 14.65 psia for gas purchased from it in this area.

Various producers in the area sell their gas on a wellhead basis to Colorado Interstate Gas Company at a price of 15¢ per Mcf at 14.65 psia for 1,000 BTU gas. The gas as produced averages 800 BTU and payment to the producer is about 12¢ per Mcf for wellhead sales. Dorchester sells gas to Panhandle Eastern Pipe Line Company from its Kansas leases in the field and is paid 11¢ per Mcf therefor.

Thus, it can be seen that the price of 10¢ per Mcf which is requested hereunder is below the minimum price which should be charged for gas in this area and, as has been found by the Oklahoma Corporation Commission in its Order No. 26096, a minimum price of 9.8262¢ is required to prevent economic and physical waste and discrimination and the inequitable taking of natural gas from the common source of supply. The Commission knows of its own knowledge from the contracts that are on file with it and from experience gained in dealing with the problems of the independent producers that a 6.2¢ per Mcf price for a quantity of 76,000 Mcf per day is completely unrealistic and way out of line with a current

just and reasonable rate for the gas. If Dorchester's rate is to be regulated by the Commission, the provisions of the Natural Gas Act itself require that Dorchester receive a just and reasonable rate therefor.

Dorchester is requesting the lowest minimum price which will enable the obligations on the loan encumbering the properties to be met so that it may be allowed at this time without any increase in Natural's rates to its customers. It is not believed that the price of 10¢ per Mcf, which is substantially the Oklahoma minimum price of 9.8262¢, will require any increase in the existing rates of Natural which have been accepted by the Commission as just and reasonable.

The acceptance by the Commission of this filing as of the date of filing hereof will serve to alleviate to some extent the disastrous position in which Dorchester finds itself. Postponement by the Commission of the effective date hereunder will only serve to increase the difficulties of Dorchester and in turn of Natural.

It is respectfully requested that the Commission enter an order at the earliest possible date allowing this rate to become effective on the date of filing

hereof and that the Commission grant to the Applicant hereunder opportunity to present this matter to the full Commission at the earliest possible date.

Communications with respect hereto should be sent to:

J. A. Crichton
602 Fidelity Union Life Building
Dallas, Texas

And

Gene M. Woodfin
Vinson, Elkins, Weems & Searls
Esperson Building
Houston, Texas

A complete copy hereof has been furnished to Natural Gas Pipeline Company of America, the purchaser hereunder, and to the Oklahoma Corporation Commission.

Gene M. Woodfin

Item 1

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared GENE M. WOODFIN, who, being by me first duly sworn, on oath deposes and says:

That he is Attorney for DORCHESTER CORPORATION; that as such he has signed the foregoing statement for and on behalf of Dorchester Corporation; that he is authorized to do so; that he has read the foregoing statement, including the Exhibit attached thereto, and is familiar with the contents thereof and that the facts and allegations contained therein are true and correct to the best of his knowledge and belief.

(Signed) Gene M. Woodfin
Gene M. Woodfin

SUBSCRIBED AND SWORN TO before me this the 4th day of December, 1954.

Rosamond Hilletrandt, Notary Public in and for Harris County, Texas.

*Item I*

DORCHESTER CORPORATION

SALES TO NATURAL GAS PIPELINE COMPANY OF AMERICA

| | M C F 14.65# | Value @ 9.8262¢ | Value @ 10¢ | Value Contract Price 7¢ @ 16.40# |
|---|---|---|---|---|
| November 1953 | 2,669,022 | $262,263.44 | $266,902.20 | $167,783.00 |
| December 1953 | 3,377,376 | 331,867.72 | 337,737.60 | 210,202.15 |
| January 1954 | 1,981,278 | 197,791.68 | 198,127.80 | 125,241.84 |
| February 1954 | 2,460,542 | 241,777.78 | 246,054.20 | 153,040.61 |
| March 1954 | 2,059,889 | 202,408.81 | 205,988.90 | 129,504.26 |
| April 1954 | 2,272,571 | 223,307.96 | 227,257.10 | 142,902.63 |
| May 1954 | 2,700,551 | 265,361.54 | 270,055.10 | 170,165.62 |
| June 1954 | 2,087,560 | 205,127.82 | 208,756.00 | 131,721.28 |
| July 1954 | 1,961,878 | 192,778.05 | 196,187.80 | 123,120.92 |
| August 1954 | 2,433,039 | 239,075.28 | 243,303.90 | 151,170.57 |
| September 1954 | 2,008,932 | 197,401.68 | 200,893.20 | 124,833.78 |
| October 1954 | 1,885,954 | 185,317.61 | 188,595.40 | 117,138.02 |
| Nov. est. 1954 | 1,896,000 | 171,137.00 | 189,600.00 | 118,559.00 |
| December 1955 | 2,570,000 | 252,533.00 | 257,000.00 | 160,705.00 |
| January 1955 | 2,570,000 | 252,533.00 | 257,000.00 | 160,705.00 |
| February 1955 | 2,324,000 | 228,361.00 | 232,400.00 | 145,322.00 |
| March 1955 | 2,420,000 | 237,794.00 | 242,000.00 | 151,323.00 |
| April 1955 | 1,500,000 | 147,393.00 | 150,000.00 | 93,795.00 |
| May 1955 | 1,550,000 | 152,306.00 | 155,000.00 | 96,922.00 |
| June 1955 | 1,500,000 | 147,393.00 | 150,000.00 | 93,795.00 |
| July 1955 | 1,550,000 | 152,306.00 | 155,000.00 | 96,922.00 |
| August 1955 | 1,550,000 | 152,306.00 | 155,000.00 | 96,922.00 |
| September 1955 | 1,950,000 | 191,610.00 | 195,000.00 | 121,934.00 |
| October 1955 | 2,015,000 | 197,998.00 | 201,500.00 | 125,998.00 |
| November 1955 | 1,950,000 | 191,610.00 | 195,000.00 | 121,934.00 |

[1153]

(Item J)

# UNITED STATES OF AMERICA
# FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

In the Matter of Dorchester Corporation } Docket No. G-6505

## Order Suspending Proposed Changes in Rates

Dorchester Corporation, on December 6, 1954, tendered for filing proposed changes in presently effective rate schedules for sales subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filing which is proposed to become effective on the date shown:

| Description | Purchaser | Rate Schedule Designation | Effective Date[1] |
|---|---|---|---|
| Notice of change, dated December 4, 1954 | Natural Gas Pipeline Company of America | Supplement No. 4 to FPC Gas Rate Schedule No. 2 | January 5, 1955 |

[1] The stated effective date is the first day after expiration of the required thirty days' notice, or the effective date proposed by Respondent if later.

The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission *finds:*

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

[1154]

The Commission *orders:*

(A) Pursuant to the authority contained in Sections 4 and 15 of the Natural Gas Act, a public hearing be held upon a date to be fixed by further notice by the Secretary concerning the lawfulness of said proposed changes in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and it is hereby suspended and the use thereof deferred until March 1, 1955, and for such further time until it is made effective in the manner prescribed by the Natural Gas Act, subject to further order of the Commission.

(B) Interested State commissions may participate as provided by Sections 1.8 and 1.37 f) [18 CFR 1.8 and 1.37(f)] of the Commission's Rules of Practice and Procedure.

By the Commission.

J. H. Gutride,

Acting Secretary.

Adopted: December 22, 1954
Issued: December 29, 1954

[1155]

(Item K)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of
Dorchester Corporation } Docket No. G-6505

## MOTION TO MAKE SUSPENDED RATE EFFECTIVE

Dorchester Corporation on December 6, 1954, tendered for filing its Supplement No. 4 to its FPC Gas Rate Schedule No. 2 which would have become effective, on thirty days' notice, on January 5, 1955. By order issued by the Commission on December 29, 1954, the Commission suspended the operation of said Supplement No. 4 to Dorchester's FPC Gas Rate Schedule No. 2 until March 1, 1955, and for such further time until it is made effective in the manner prescribed by the Natural Gas Act, subject to further order of the Commission.

Dorchester Corporation hereby moves, pursuant to Section 4(e) of the Natural Gas Act, as amended, that said Supplement No. 4 to Dorchester Corporation's FPC Gas Rate Schedule No. 2 with respect to the sale of gas

[1156]

by Movant to Natural Gas Pipeline Company of America be made effective on March 1, 1955.

Dorchester further respectfully requests the Commission to enter an order setting a hearing in this matter at the earliest possible date so that the uncertainty with respect to Dorchester Corporation's rate may be removed. The uncertainty was

created by order of the Commission issued on November 30, 1954, allowing Dorchester's Gas Rate Schedule No. 2, with Supplements 1, 2 and 3 thereto, to become effective. In such order the Commission stated:

> "In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954, for decision.
>
> "To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that

[1157]

> such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

and the Commission ordered:

> "The acceptance for filing of the aforesaid rate schedule and supplements thereto is subject to the express condition that such filing is without prejudice to any claims or contentions which have been made by or for Dorchester Corporation or by Natural Gas Pipeline Company of America in the litigation pending before the Supreme Court of the United States in Cause No. 321, October Term 1954."

Counsel in such case have advised that the probabilities are that this case will not be set for submission prior to April, 1955, and that the earliest date that a decision could reasonably be

expected to be handed down would be in June of 1955. Until further action by the Commission or adjudication by a court of competent jurisdiction, uncertainty exists, not only as to the effective rate of Dorchester (and its predecessors in interest) from June 7, 1954, to January 5, 1955, but as to its presently effective filed rate.

Each day that any uncertainty exists with respect to the presently effective rate of Dorchester Corporation with respect to the sale covered by such

[1158]

rate schedule is not in the public interest and this matter should be resolved at the earliest possible date. Dorchester Corporation is ready, willing and able to enter upon a hearing with respect to this matter at the earliest date that can be set by the Commission.

Respectfully submitted,

DORCHESTER CORPORATION

By s/ GENE M. WOODFIN
Gene M. Woodfin, Attorney

[1159]

STATE OF TEXAS )
COUNTY OF HARRIS )

BEFORE ME, the undersigned authority, on this day personally appeared GENE M. WOODFIN, who, after being first duly sworn, on his oath deposed and said:

That he is Attorney for Dorchester Corporation; that the matters and facts set forth in the foregoing Motion are true and correct to the best of his information, knowledge and belief;

and that a copy thereof has been served upon Natural Gas Pipeline Company of America and the Oklahoma Corporation Commission by mailing copies thereof to such company and Commission.

s/ GENE M. WOODFIN

Gene M. Woodfin

SUBSCRIBED AND SWORN TO before me this the 25th day of January, 1955.

s/ ROSAMOND HILLEBRANDT

Rosamond Hillebrandt, Notary Public in and for Harris County, Texas

Seal

[1161].

(Item L)

January 27, 1955

Federal Power Commission
441 G Street, N.W.
Washington, D. C.

In the Matter of Dorchester Corporation, Docket No. G-6505. With respect to the motion of Dorchester Corporation to make the rate effective which was suspended in this proceeding and to set the matter for hearing, we wish to advise as follows: In view of the rather unusual conditions under which Dorchester conducts its operations we deem it imperative that the Commission require Dorchester to furnish a corporate surety bond for the full difference between the contract price (6.25¢) and the filed rate (10¢) unless and until the United States Supreme Court in the Panoma Cases (October Term

1954, Nos. 191 and 321) holds the price fixing order of the Oklahoma Commission to be valid. (These cases are set for argument for the week of March 28, 1955). We understand that Dorchester has no revenues other than those under the contract and that approximately 96½% of those revenues are pledged and are immediately paid out. Under these circumstances, it appears that Dorchester would be unable financially to respond on its own bond. Since the lawfulness of the conditional rate made effective with respect to Dorchester by the order of the Commission adopted November 24, 1954 (issued November 30, 1954) will not be determined until the decision of the U.S. Supreme Court in the Panoma cases, it seems inappropriate that this case be set for hearing until after such determination.

NATURAL GAS PIPELINE COMPANY OF AMERICA

By George P. Garver, Vice President

cc: Messrs. Oates
Hedrick
Garver
Holmes
McDugald
Spies

[1176]

**(Item N)**

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

In the Matter of
Dorchester Corporation } Docket No. G-6505

ORDER MAKING EFFECTIVE PROPOSED RATE CHANGES UPON FILING OF BOND TO ASSURE REFUND OF EXCESS CHARGES

On January 26, 1955, Dorchester Corporation (Applicant), in accordance with the provisions of the Natural Gas Act, particularly Section 4 (e) thereof, moved in the above-entitled proceeding that there be made effective as of March 1, 1955, Supplement No. 4 to Applicant's FPC Gas Rate Schedule No. 2, which was suspended until March 1, 1955 by order issued herein on December 29, 1954.

On January 27, 1955, Natural Gas Pipeline Company of America, the purchaser under the rate schedule here involved, requested that the Commission require Applicant to furnish a corporate surety bond.

This proceeding, which was instituted pursuant to Sections 4 and 15 of the Natural Gas Act for the purpose of determining the lawfulness of the increased rates and charges proposed by Applicant, has not been concluded, nor decision rendered therein.

Section 4 (e) of the Natural Gas Act provides, in pertinent part:

"If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to

keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified."

[1177]

The Commission *finds:*

It is appropriate in carrying out the provisions of the Natural Gas Act to prescribe terms and conditions with respect to refunds by Applicant as hereinafter provided.

The Commission *orders:*

(A) Upon execution by Applicant of the corporate bond described in paragraph (D) below, and acceptance thereof, evidenced by letter addressed to Applicant by the Secretary of the Commission, the rates, charges and classifications set forth in Supplement No. 4 to Applicant's FPC Gas Rate Schedule No. 2 shall be effective as of March 1, 1955, subject to further orders of the Commission in this proceeding.

(B) Applicant shall refund to those entitled thereto the portion of the increased rates and charges made effective as of March 1, 1955, found by the Commission in this proceeding not justified, with interest at the rate of 6% per annum from the date of payment to Applicant until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates or charges effective as of March 1, 1955, for each billing period, specifying by whom and in whose behalf such amounts were paid, and shall report in writing and under oath to the Commission monthly for each billing period and for each purchaser the billing determinants of natural gas sales to such purchasers and the revenues resulting therefrom, as computed under the rates in effect immediately prior to March 1, 1955, and under the rates allowed by this

order to become effective, together with the difference in the revenues so computed.

(C) As a condition of this order, within fifteen (15) days from the date of issuance of this order Applicant shall execute and file with the Secretary of this Commission a corporate bond in the amount and conditioned as set out in paragraph (D) hereof, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved.

(D) By said corporate bond, Applicant, its surety, and their successors and assigns, jointly and severally, shall be held and firmly bound unto the Federal Power Commission, for the use and benefit of those entitled thereto, in the sum of $41,000; and said bond shall contain the following provisions:

[1178]

"The condition of the obligation is such that:

"WHEREAS, Dorchester Corporation (herein called 'Applicant'), on December 6, 1954, filed with the Federal Power Commission (herein called 'the Commission') Applicant's Supplement No. 4 to its FPC Gas Rate Schedule No. 2, proposing to increase its rates and charges subject to the Commission's jurisdiction; and

"WHEREAS, by order issued December 29, 1954, the Commission suspended the operation of the said proposed Supplement No. 4, and ordered a hearing to be held concerning the lawfulness of the proposed rates, charges and classifications, subject to the Commission's jurisdiction, as therein set forth, and by said order issued December 29, 1954, the use of such proposed supplement was deferred until March 1, 1955, and thereafter until such further time as the same might be made effective in the manner prescribed by the Natural Gas Act; and

"WHEREAS, a hearing has not been held and the proceeding has not been concluded, and Applicant, pursuant to the provisions of Section 4 (e) of the Natural Gas Act, having on January 26, 1955, filed a motion, later supplemented, to make the changes in rates effective as of March 1, 1955; and

"WHEREAS, the Commission, in response to said motion, on April 6, 1955, adopted its order making the rates, charges and classifications set forth in the aforesaid Supplement No. 4 to Applicant's FPC Gas Rate Schedule No. 2 effective as of March 1, 1955, subject to Applicant furnishing a bond in the sum of Forty-one thousand dollars ($41,000), satisfactory to the Commission, and required that Applicant refund any portion of the increased rates and charges made effective as of March 1, 1955, found by the Commission in Docket No. G-6505 not justified;

"NOW, THEREFORE, if Applicant, its successors and assigns, in conformity with the terms and conditions of the order adopted on April 6, 1955 by the Federal Power Commission, *In the Matter of Dorchester Corporation*, Docket No. G-6505, shall: (1) well and truly repay at such times and in such amounts, to the persons entitled thereto,

[1179]

and in such manner as may be required by the final order of the Commission in said proceeding, subject to court review thereof, any portion of such rates and charges collected by Applicant after March 1, 1955, as such final order may find not justified, together with interest thereon at the rate of six (6) per cent per annum from the date of payment thereof to Applicant until refunded; and (2), comply otherwise with the terms and conditions of said order adopted April 6, 1955, and with the provisions of the Natural Gas Act relating thereto, then this obligation shall be terminated, otherwise to remain in full force and effect."

(E) If Applicant shall, in conformity with the terms and conditions of paragraph (B) of this order, make the refunds as may be required by order of the Commission, the bond shall be discharged, otherwise it shall remain in full force and effect.

By the Commission.

Leon M. Fuquay,
Secretary.

Adopted: April 6, 1955
Issued: April 7, 1955

[1180]

(Item O)

TELEGRAM

To Mr. Leon M. Fuquay, Secretary APRIL 13, 1955
Federal Power Commission
441 G Street, N. W., Washington 25, D. C.

In the matter of Dorchester Corporation Docket No. G-6505, order issued April 7, 1955 making effective proposed price of 10 cents per Mcf upon filing of surety bond in sum of $41,000 does not afford Natural adequate protection under circumstances arising since order was issued. When Dorchester filed contract as rate schedule pursuant to Order 174-A the 9.8262 cent minimum price order of Oklahoma Corporation Commission was included as amendment of such contract. Your Commission accepted such filing on condition that it was proper only if 9.8262 cent order was valid. U. S. Supreme Court on April 11 declared such order invalid thereby rendering improper the 9.8262 cent rate of Dorchester and making the contract price of 6.2 cents the proper rate under the filing of Dorchester on October 28, 1954. Difference between 6.2 cent price and 10 cent price allowed to become effective March 1, 1955 represents an

annual increase to Natural of approximately $900,000. Please refer to our telegram dated January 27, 1955 to you in this docket for financial circumstances under which Dorchester operates. Natural therefore respectfully requests that order of April 7, 1955 be amended to require a surety bond of not less than $900,000.

NATURAL GAS PIPELINE COMPANY OF AMERICA
By George P. Garver, Vice President

**[1184]**

**(Item P)**

TELEGRAM

TVX PAID

HOUSTON, TEXAS
APRIL 19, 1955

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington, D. C.

Re Docket G-6505 Dorchester Corporation has filed bond as required by order of Commission issued April 7, 1955 to make proposed ten cent rate effective on March 1, 1955 in accordance with motion made by Dorchester pursuant to Section 4(e) of the Act. The only rate filed by Dorchester and its only legal rate under the Natural Gas Act in effect prior to March 1, 1955 was 9.8262 cents. Decision of Supreme Court in minimum price cases did not affect such legal filed rate. The bond as required by Commission's order is proper and should be accepted. If there is any question Dorchester requests immediate hearing before full Commission with respect to this matter and an early hearing date to determine just and reasonableness of ten cent

rate. Copy hereof has been sent to Natural Gas Pipeline Company of America.

Respectfully submitted,
DORCHESTER CORPORATION
By Gene M. Woodfin, Attorney

[1187]

(Item Q)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of
Dorchester Corporation } Docket No. G-6505

PETITION TO RECONSIDER PARAGRAPH (D) OF THE COMMISSION'S ORDER ADOPTED APRIL 6, 1955

Comes now NATURAL GAS PIPELINE COMPANY OF AMERICA (Natural) and would respectfully show and say unto the Commission as follows:

I

That on October 28, 1954, Dorchester Corporation (Dorchester), the successor in interest to Panoma Corporation, pursuant to the requirements of Order No. 174-A, as amended, filed, as its FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto, a certain gas purchase contract dated as of December 1, 1946, as amended, for the sale to Natural of gas to be produced in the Guymon-Hugoton Field, Texas County, Oklahoma, together with Order No. 26096 of the Corporation Commission of Oklahoma (said Order No. 26096 being designated as Supplement No. 3 of such filing), purporting to

fix, effective as of August 1, 1952, among other things, a minimum price of 9.8262¢ per Mcf (at 14.65 psia) for the gas sold under such contract, which said order, Dorchester alleged, "amended and supplemented" such contract.

[1188]

II

That following Natural's telegraphic advice and protest that the contract price and legal price under such contract, as of June 7, 1954, as contemplated by the Commission's Order No. 174-A, was 7¢ per Mcf at a pressure base of 16.4 psia (6.2¢ per Mcf at 14.65 psia) and that all payments in excess of such contract price were made under compulsion and duress of said Order No. 26096 of the Corporation Commission of Oklahoma, the validity of which, as applied to Natural's purchases from Dorchester (as well as its predecessor Panoma Corporation), was then the subject matter of an appeal to the United States Supreme Court in Cause No. 321, October Term 1954, the Commission, under its order adopted on November 24, 1954, after first stating that:

> "* * * it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954, for decision."

and that

> "To protect the respective rights of Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the ten-

ders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

ordered that:

[1189]

"(A) FPC Gas Rate Schedule No. 2 and Supplements Nos. 1 through 3 thereto filed by Dorchester Corporation on October 28, 1954, be and the same are hereby accepted for filing subject to the express condition specified in (B) hereof.

"(B) The acceptance for filing of the aforesaid rate schedule and supplements thereto is subject to the express condition that such filing is without prejudice to any claims or contentions which have been made by or for Dorchester Corporation or by Natural Gas Pipeline Company of America in the litigation pending before the Supreme Court of the United States in Cause No. 321, October Term 1954."

III

That on December 6, 1954, Dorchester, in accordance with the provisions of the Natural Gas Act, tendered for filing Supplement No. 4 of its said FPC Rate Schedule No. 2, whereby it proposed to change the rate stated therein so that the same should be 10¢ per Mcf, measured at a pressure base of 14.65 psia. Supplement No. 4 was, however, suspended by the Commission under its order adopted on December 22, 1954, in Docket No. G-6505, and the use thereof ordered deferred until March 1, 1955, at which time the same was, by motion filed under Section 4(e) of the Natural Gas Ac, on January 26, 1955, made effective by Dorchester, subject to the right of the Commission to require a bond, to be approved by it, to give assurance of a refund of any amounts ordered refunded by the Commission.

[1190]

That thereafter, under paragraph (D) of its order adopted April 6, 1955, the Commission fixed the amount of such bond to be so filed by Dorchester in the sum of $41,000.*

IV

That on April 11, 1955, the Supreme Court of the United States, in a per curiam opinion entered in Causes Nos. 191 and 321, held that said Order No. 26096 of the Corporation Commission of Oklahoma could not be validly applied to the sale of gas by Dorchester (and its predecessor Panoma Corporation) to Natural under such contract dated as of December 1, 1946, stating:**

> "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce. We held in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, that such a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission. The *Phillips* case, therefore, controls this one.
>
> "We disagree with the contention of respondents that *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.* 340 U.S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, are applicable here. In those cases we were dealing with constitutional questions and not the construction of the Natural Gas Act. The latter question was specifically not passed upon in those cases. Reversed."

* The annual revenues to be collected by Dorchester under said Supplement No. 4 are approximately $900,000 in excess of those that would have been collected by Dorchester under the price provisions of Natural's gas purchase contract dated as of December 1, 1946, as they existed on June 7, 1954 (i.e.—6.2¢ per Mcf measured on a 14.65 pound pressure base).

** Mr. Justice Douglas, dissenting.

[1191]

V

That the Supreme Court of the United States having held that said Order No. 26096 is *not* valid as applied to the sale by Dorchester (and its predecessor Panoma Corporation) to Natural, the lawful rate or charge for gas sold thereunder as of June 7, 1954, as contemplated by the Commission's Order No. 174-A, as amended, was that provided under the terms of said contract dated as of December 1, 1946; namely, 7¢ per Mcf at 16.4 psia (6.2¢ per Mcf at 14.65 psia) and, under the provisions of the Commission's order adopted November 24, 1954, such rate or charge was the only lawful rate or charge prior to March 1, 1955.

WHEREFORE, Natural respectfully suggests that the Commission should reconsider the amount of the bond fixed under its order adopted April 6, 1955.

Respectfully submitted,

NATURAL GAS PIPELINE COMPANY OF AMERICA

By G. P. GARVER
Vice President

[1192]

STATE OF ILLINOIS )
COUNTY OF COOK ) ss.

G. P. GARVER, of lawful age, being first duly sworn, states that he is a Vice President of NATURAL GAS PIPELINE COMPANY OF AMERICA; that he has read the foregoing

Petition and knows the contents thereof; and that the facts set forth therein are true as he verily believes.

G. P. GARVER

G. P. Garver
Vice President

Subscribed and sworn to before me this 20th day of April, 1955.

MARY BARKYOUMB

Mary Barkyoumb,
Notary Public in
and for Cook County,
Illinois

(NOTARIAL SEAL)

My Commission expires
June 17, 1956.

[1210]

**(Hearings, Oct. 11-13, Item K)**

KNOW ALL MEN BY THESE PRESENTS, That we DORCHESTER CORPORATION, A Delaware Corporation, Dallas, Texas, called the Principal, and THE TRAVELERS INDEMNITY COMPANY, A Connecticut Corporation, called the Surety, are held and firmly bound unto THE FEDERAL POWER COMMISSION for the use and benefit of those entitled thereto, in the sum of FORTY-ONE THOUSAND AND NO/100 ..... Dollars ($41,000.00), for the payment whereof said Principal and Surety bind themselves firmly by these presents.

The condition of the obligation is such that:

WHEREAS, Dorchester Corporation (herein called "Applicant"), on December 6, 1954, filed with the Federal Power Commission (herein called "the Commission") Applicant's Sup-

plement No. 4 to its FPC Gas Rate Schedule No. 2, proposing to increase its rates and charges subject to the Commission's jurisdiction; and

WHEREAS, by order issued December 29, 1954, the Commission suspended the operation of the said proposed Supplement No. 4, and ordered a hearing to be held concerning the lawfulness of the proposed rates, charges and classifications, subject to the Commission's jurisdiction, as therein set forth, and by said order issued December 29, 1954, the use of such proposed supplement was deferred until March 1, 1955, and thereafter until such further time as the same might be made effective in the manner prescribed by the Natural Gas Act; and

WHEREAS, a hearing has not been held and the proceeding has not been concluded, and Applicant, pursuant to the provisions of Section 4(e) of the Natural Gas Act, having on January 26, 1955, filed a motion, later supplemented, to make the changes in rates effective as of March 1, 1955; and

WHEREAS, the Commission, in response to said motion, on April 6, 1955, adopted its order making the rates, charges and classifications set forth in the aforesaid Supplement No. 4 to Applicant's FPC Gas Rate Schedule No. 2 effective as of March 1, 1955, subject to Applicant furnishing a bond in the sum of Forty-one thousand dollars ($41,000), satisfactory to the Commission, and required that Applicant refund any portion of the increased rates and charges made effective as of March 1, 1955, found by the Commission in Docket No. G-6505 not justified;

NOW, THEREFORE, if Applicant, its successors and assigns, in conformity with the terms and conditions of the order adopted on April 6, 1955 by the Federal Power Commission, *In the Matter of Dorchester Corporation*, Docket No. G-6505, shall: (1) well and truly repay at such times and in such

amounts, to the persons entitled thereto, and in such manner as may be required by the final order of the Commission in said proceeding, subject to court review thereof, any portion of such rates and charges collected by Applicant after March 1, 1955, as such final order may find not justified, together with interest thereon at the rate of six (6) per cent per annum from the date of payment thereof to Applicant until refunded; and (2), comply otherwise with the terms and conditions of said order adopted April 6, 1955, and with the provisions of the Natural Gas Act relating thereto, then this obligation shall be terminated, otherwise to remain in full force and effect.

[1211]

SIGNED, SEALED AND DATED this 14th day of April, 1955.

DORCHESTER CORPORATION

By John A. Crichton
President

THE TRAVELERS INDEMNITY COMPANY

By J. Leroy Tull
J. Leroy Tull, Attorney-in-Fact

Attest:

Sam R. Parker
Asst. Sec.

Witness:

Holway D. Farrar, Jr.

[1212]

**The Travelers Indemnity Company**
**Hartford, Connecticut**

## POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS:**

That THE TRAVELERS INDEMNITY COMPANY, a corporation of the State of Connecticut, does hereby make, constitute and appoint

G. A. Buzard, Holway D. Farrar, Jr., Alden L. Lancaster, C. W. Morgan, J. Leroy Tall, Robert S. Winter, all of Dallas, Texas, EACH

its true and lawful Attorney(s)-in-Fact, with full power and authority, for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto, if a seal is required, bonds, undertakings, recognizances or other written obligations in the nature thereof, as follows:

Any and all bonds, undertakings, recognizances or other written obligations in the nature thereof

and to bind THE TRAVELERS INDEMNITY COMPANY thereby, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed. This appointment is made under and by authority of the following by-laws of the Company which by-laws are now in full force and effect:

ARTICLE IV, SECTION 9. The Chairman of the Board, the President, any Vice President, any Secretary or any Department Secretary may appoint attorneys-in-fact or agents with power and authority, as defined or limited in their respective powers of attorney, for and on behalf of the Company to execute and deliver, and affix the seal of the Company there-

to, bonds, undertakings, recognizances or other written obligations in the nature thereof and any of said officers may remove any such attorney-in-fact or agent and revoke the power and authority given to him.

ARTICLE IV, SECTION 11. Any bond, undertaking, recognizance or written obligation in the nature thereof shall be valid and binding upon the Company when signed by the Chairman of the Board, the President or any Vice President and duly attested and sealed, if a seal is required, by any Secretary or any Department Secretary or any Assistant Secretary, or when signed by the Chairman of the Board, the President or any Vice President and countersigned and sealed, if a seal is required, by a duly authorized attorney-in-fact or agent; and any such bond, undertaking, recognizance or written obligation in the nature thereof shall be valid and binding upon the Company when duly executed and sealed, if a seal is required, by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority granted by his or their power or powers of attorney.

This power of attorney revokes that issued May 6, 1954 on behalf of G. A. Buzard, Alden L. Lancaster, C. W. Morgan, J. Leroy Tull, Robert S. Winter

IN WITNESS WHEREOF, THE TRAVELERS INDEMNITY COMPANY has caused these presents to be signed by its proper officer and its corporate seal to be hereunto affixed this 26th day of August 1954.

(SEAL) **THE TRAVELERS INDEMNITY COMPANY**

By J. C. Smith

Secretary

**State of Connecticut, County of Hartford** ss:

On this 26th day of August in the year 1954 before me personally came J. C. Smith to me known, who, being by me duly

sworn, did depose and say: that he resides in the State of Connecticut: that he is Secretary of THE TRAVELERS INDEMNITY COMPANY, the corporation described in and which executed the above instrument: that he knows the seal of said corporation: that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of his office under the by-laws of said corporation, and that he signed his name thereto by like authority.

(SEAL)

GRACE G. HOLLAND

Notary Public
My commission expires April 1, 1959

**State of Connecticut, County of Hartford—ss:**

I, R. W. Kammann, Assistant Secretary of The Travelers Indemnity Company, a corporation of the State of Connecticut, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company, at the City of Hartford, this 14th day of April 1955.

(SEAL)

R. W. KAMMANN

Assistant Secretary

# NATURAL GAS PIPELINE COMPANY OF AMERICA
## COST OF GAS PURCHASED
### (All Volumes in MCF as Metered @ 14.65 PSIA)

| Line No. | | Test Period | | | Adjustment | | Adjusted Test Period | | |
|---|---|---|---|---|---|---|---|---|---|
| | | MCF | Amount | Average Price Per MCF | MCF | Amount | MCF | Amount | Average Price Per MCF |
| 1 | **Field Purchases** | | | | | | | | |
| 2 | R. A. Burnett & B. O. Cornelius | 167,261 | $ 10,486.07 | 6.2693¢ | 15,239 | $ 1,142.93 | 182,500 | $ 11,629 | 6.3718¢ |
| 3 | Cities Service Gas Company | 10,367,845 | 1,041,104.79 | 10.0417¢ | (3,662,845) | (322,362.79) | 6,705,000 | 718,742 | 10.7195¢ |
| 4 | I. Earl Nutter | 291,370 | 18,266.96 | 6.2693¢ | (72,370) | (4,312.96) | 219,000 | 13,954 | 6.3718¢ |
| 5 | Red River Gas Company | 645,312 | 40,351.35 | 6.2530¢ | (645,312) | (40,351.35) | — | — | — |
| 6 | Sinclair Oil & Gas Company | 4,095,169 | 366,966.32 | 8.9610¢ | (292,169) | (18,752.32) | 3,803,000 | 348,214 | 9.1563¢ |
| 7 | Kimberlin & Howse | 158,179 | 12,654.32 | 8.0000¢ | (12,179) | (591.32) | 146,000 | 12,063 | 8.1312¢ |
| 8 | Panhandle Eastern Pipeline Company | 834,053 | 83,405.30 | 10.0000¢ | (834,053) | (83,405.30) | — | — | — |
| 9 | Phillips Petroleum Company & Others | 13,692,563 | 1,638,388.70 | 11.9655¢ | 4,233,437 | 871,251.30 | 17,926,000 | 2,509,640 | 14.0000¢ |
| 10 | Total Field Purchases | 30,251,752 | $ 3,211,623.81 | | (1,270,252) | $ 402,618.19 | 28,981,500 | $ 3,614,242 | |
| 11 | **Gasoline Plant Outlet Purchases** | | | | | | | | |
| 12 | Panoma Corporation | 27,716,517 | $ 2,723,480.39 | 9.8262¢ | (4,011,517) | $ (394,179.39) | 23,705,000 | $ 2,329,301 | 9.8262¢ |
| 13 | Supplemental (Cities Service) | 2,760,947 | 310,162.07 | 11.2339¢ | (2,760,947) | (310,162.07) | — | — | — |
| 14 | The Shamrock Oil & Gas Corporation | 10,186, | 691,270.71(2) | 5.9027¢ | (543,298) | (19,682.71) | 9,643,000 | 581,588(2) | 6.03119¢ |
| 15 | Supplemental | 6,357,6 | 716,248.32 | 11.2659¢ | 942,337 | 171,402.68 | 7,300,000 | 887,651 | 12.1596¢ |
| 16 | Total Gasoline Plant Outlet Purchases | 47,021,425 | $ 4,351,161.49 | | (6,373,425) | $ (552,621.49) | 40,648,009 | $ 3,798,540 | |
| 17 | **Pipeline Purchases** | | | | | | | | |
| 18 | Colorado Interstate Gas Company —Panhandle | 48,395,392(1) | $ 3,385,026.31(3) | 6.9945¢ | 514,608 | $4,215,917.69 | 48,910,000(1) | $ 7,600,944(3) | 15.5407¢ |
| | —Morton-Co | — | — | | 18,250,000 | 3,230,174.00 | 18,250,000 | 3,230,174(4) | 17.6996¢ |
| 19 | Cities Service Gas Company | 1,377,382 | 182,825.65 | 13.2734¢ | (1,377,382) | (182,825.65) | — | — | |
| 20 | Total Pipeline Purchases | 49,772,774 | $ 3,567,851.96 | | 17,387,226 | $7,263,266.04 | 67,160,000 | $10,831,118 | |
| 21 | SUB TOTAL | 127,045,951 | $11,130,637.26 | | 9,743,549 | $7,113,262.74 | 136,789,500 | $18,243,900 | |
| 22 | Texas Illinois Natural Gas Pipeline Company | 23,760,545 | 7,278,922.48 | 30.6345¢ | 5,939,296 | 2,285,999.52 | 29,699,841 | 9,564,922 | 32.2053¢ |
| 23 | GRAND TOTAL | 150,806,496 | $18,409,559.74 | | 15,682,845 | $9,399,262.26 | 166,489,341 | $27,808,822 | |

NOTES: (1) Gross Delivery.
(2) Does Not Include Compression Charge.
(3) Includes Leased Facilities of $443,040.
(4) Includes Transportation Charge of $532,824.
( ) Denotes Red Figures.

**Statement H-3**

NATURAL GAS PIPELINE COMPANY OF AMERICA

PRODUCED GAS AT WEIGHTED AVERAGE FIELD PRICE

| | |
|---|---|
| Produced Gas for Test Period MCF 14.65# P.S.I.A. | 63,861,000 |
| Weighted Average Field Price | 8.0146c per Mcf. |
| Produced Gas at Weighted Average Field Price | $5,118,204 |

[1245]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Lee Smith, Seaborn L. Digby and Frederick Stueck.

In the Matter of Dorchester Corporation } Docket No. G-6505

ORDER FIXING DATE OF HEARING

Natural Gas Pipeline Company of America (Natural) on April 21, 1955, filed a petition requesting reconsideration of paragraph (D) of the Commission's order making effective proposed rate changes upon filing of bond to assure refund of excess charges in the above matter, issued April 7, 1955.

Paragraph (D) provides in pertinent part as follows:

> "By said corporate bond, Applicant, its surety, and their successors and assigns, jointly and severally, shall be held and firmly bound unto the Federal Power Commission, for the use and benefit of those entitled thereto, in the sum of $41,000; * * * "

Dorchester Corporation (Dorchester) on October 28, 1954, tendered for filing, pursuant to Order No. 174-A, the basic contract and certain supplements providing for the sale in interstate commerce to Natural of natural gas produced in the Guymon-Hugoton Field, Texas County, Oklahoma. The tendered filings were designated as Dorchester Corporation, FPC Gas Rate Schedule No. 2, and Supplement Nos. 1 through 3 thereto.

Gas Rate Schedule No. 2 is a contract dated December 1, 1946 (a) between Harrington & Marsh, a predecessor of Dorchester, and (b) Natural, providing a price of 7¢ per Mcf at 16.4 psia for gas purchased by Natural under the basic contract. Supplement No. 1 thereto is a letter dated February 25, 1948, from Natural to Harrington & Marsh agreeing to a modification of the basic contract. Supplement No. 2 is an amendment of the basic contract dated October 1, 1949 between Natural and Panoma Corporation (Panoma). Panoma is also a predecessor of Dorchester, having succeeded to the rights of Harrington & Marsh. Neither supplement, however, altered the basic contract price for the natural gas.

Supplement No. 3 is a copy of Order No. 26096 of the Corporation Commission of the State of Oklahoma entered July 29, 1952, in its Cause CD No. 3628 fixing a minimum price of 9.8262¢ per Mcf at the wellhead at pressure of 14.65 psia for gas produced from any well located in the Guymon-Hugoton Field.

[1246]

In our order allowing the rate schedule and supplements to take effect, issued November 30, 1954, we stated as follows:

> "To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

By our order issued December 29, 1954, we suspended until March 1, 1955 Supplement No. 4, to Dorchester's FPC Gas Rate Schedule No. 2 providing for an increase from 9.8262¢ per Mef to 10¢ per Mef, and by order issued April 7, 1955 we permitted the supplement to become effective as of March 1, 1955, subject to the filing of the $41,000 bond, referred to above.

On April 11, 1955, the Supreme Court of the United States, in a *per curiam* opinion entered in Causes Nos. 191 and 321, held Order No. 26096 of the Corporation Commission of the State of Oklahoma to be invalid insofar as it related to the sale of natural gas by Dorchester to Natural here in question.

In its petition for reconsideration Natural alleges that:

> "The Supreme Court of the United States having held that said Order No. 26096 is *not* valid as applied to the sale by Dorchester (and its predecessor Panoma Corporation) to Natural, the lawful rate or charge for gas sold thereunder as of June 7, 1954, as contemplated by the Commission's Order No. 174-A, as amended, was that provided under the terms of said contract dated as of December 1, 1946; namely, 7¢ per Mef at 16.4 psia (6.2¢ per Mef at 14.65 psia) and, under the provisions of the Commission's order adopted November

24, 1954, such rate or charge was the only lawful rate or charge prior to March 1, 1955."

The Commission *finds:*

It is necessary and appropriate in the public interest and for the purpose of carrying out the provisions of the Natural Gas Act, particularly Sections 4, 14, 15 and 16 thereof that the Commission hold a public hearing, as hereinafter provided, on the issues presented in the petition for reconsideration filed by Natural in this matter on April 21, 1955.

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The Commission *orders:*

(A) Pursuant to the authority contained in and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly Sections 4, 14, 15 and 16, a public hearing be held, commencing July 11, 1955, at 10:00 a.m. (EDST) in a hearing room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C., concerning the matters involved and the issues presented in the petition for reconsideration filed by Natural in this matter on April 21, 1955.

(B) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] of the Commission's Rules of Practice and Procedure.

By the Commission.

Leon M. Fuquay,
Secretary.

Adopted: May 19, 1955

Issued: May 20, 1955

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

**DECISION**

In the Matter of
Dorchester Corporation } Docket No. G-6505

UPON PETITION FOR RECONSIDERATION
OF BOND ORDER

Joseph Zwerdling
Presiding Examiner

Filed: September 14, 1955

Issued: September 14, 1955

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

**DECISION**

In the Matter of
Dorchester Corporation } Docket No. G-6505

UPON PETITION FOR RECONSIDERATION
OF BOND ORDER

**APPEARANCES**

**For Natural Gas Pipeline Company of America**

Clarence H. Ross, Esquire, Chicago, Illinois
Carl McGowan, Esquire, Chicago, Illinois

**For Dorchester Corporation**

Gene M. Woodfin, Esquire, Houston, Texas
James J. Flannagan, Esquire, New York, N. Y.

**For the Staff of the Federal Power Commission**

Francis J. Walsh, Esquire

ZWERDLING, Presiding Examiner: The purpose of this proceeding is to determine the amount of the surety bond which Dorchester Corporation (Dorchester), an independent producer, should be required to furnish in connection with proposed rate changes which the Commission permitted to become effective, under bond, by order issued April 7, 1955.

On October 28, 1954 Dorchester tendered for filing, pursuant to Order No. 174-A of the Commission, a basic contract and

[1265]

certain supplements providing for the sale in interstate commerce to Natural Gas Pipeline Company of America (Natural) of natural gas produced in the Guymon-Hugoton Field, Texas County, Oklahoma. This filing included Gas Rate Schedule No. 2, being a contract dated December 1, 1946 between Harrington & Marsh, a predecessor of Dorchester, and Natural, providing a price of 6.253¢ per Mcf at 14.65 psia[1] for gas purchased by Natural under the basic contract.[2] Supplements 1 and 2 to the contract did not in any way alter the basic contract price, and are not material here. Supplement No. 3 was a copy of Order No. 26096 of the Corporation Commission of the State of Oklahoma entered July 29, 1952, which fixed a minimum

[1]For uniformity, all prices referred to herein will be at 14.65 psia.

[2]Panoma Corporation (Panoma) later succeeded Harrington and Marsh as seller under this contract, on October 1, 1948, and Dorchester took over as seller on July 1, 1954, as will be more fully examined later in this decision.

price of 9.8262¢ per Mcf at the wellhead for gas produced from any well located in the Guymon-Hugoton Field. On the basis of such order, Dorchester claimed that the effective price to Natural as of June 7, 1954, within the meaning of Section 154.92(a) of Order No. 174-A, was 9.8262¢ per Mcf.

By telegram dated November 10, 1954 Natural contended that the Oklahoma minimum price order was invalid, and that accordingly the effective price as of June 7, 1954 was only 6.253¢ per Mcf.

[1266]

Natural noted that it was attacking the validity of the Oklahoma order in the United States Supreme Court. It therefore requested the Commission to reject the filing of Supplement No. 3 as part of Dorchester's tariff. By order issued November 30, 1954 the Commission accepted the Dorchester rate schedule and supplements for filing, on a conditional basis which was explained in the following language:

> "In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.
>
> "To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

On December 6, 1954 Dorchester tendered for filing its Supplement No. 4 to FPC Gas Rate Schedule No. 2, providing for an increase to 10¢ of its rate for gas sold to Natural. By order issued December 29, 1954 the Commission suspended the proposed change in rates until March 1, 1955, and directed that a hearing be held upon a date to be fixed by further notice concerning the lawfulness of such proposed changes in rates and charges. Dorchester thereafter filed a motion to make the new rate effective March 1, 1955. On April 7, 1955 the

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Commission issued an order permitting the proposed 10¢ rate to become effective as of March 1, 1955, subject to the filing by Dorchester of a corporate surety bond in the amount of $41,000, to assure refund of any portion of such increased rates and charges which the Commission might ultimately find not to be justified.

Four days later, on April 11, 1955 the Supreme Court of the United States, in a *per curiam* opinion (*Natural Gas Pipeline Company of America* v. *Panoma Corporation and the Corporation Commission of the State of Oklahoma; Natural Gas Pipeline Company of America* v. *The Corporation Commission of the State of Oklahoma*, 349 U.S. 44, 99 L.Ed. 472), held the Oklahoma minimum price order to be invalid.

Thereafter, on April 21, 1955, Natural filed a petition with the Commission requesting reconsideration of paragraph (D) of the Commission's order of April 7, 1955, which had fixed the amount of the surety bond to be filed by Dorchester at $41,000. Natural's petition contended that since the Supreme Court had held the Oklahoma minimum price order to be invalid, the effective rate for gas delivered to Natural under the December 1, 1946 contract was 6.253¢ per Mcf as of June 7, 1954; that under such circumstances a $41,000 bond was in-

adequate. On May 20, 1955 the Commission issued an order directing that a hearing be held "concerning the matters involved and the issues presented in the petition for reconsideration filed by Natural in this matter on April 21, 1955."

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Pursuant to such order, a hearing was held before this Examiner commencing on July 11, 1955 and concluding on July 13, 1955. At the end of the hearing counsel for Dorchester moved orally on the record for omission of the intermediate decision procedure. The motion was opposed by Natural and by Staff Counsel, and on July 27, 1955 it was denied by order of the Commission. Briefs were subsequently filed by Natural, Dorchester and the Staff of the Commission, and the matter is now ready for decision.

Section 4(e) of the Natural Gas Act provides that the Commission may suspend a proposed rate change for a period up to five months. If the rate hearing has not been concluded and an order made at the expiration of such suspension period, on motion of the natural-gas company making the filing the proposed change of rate must be permitted to go into effect. However, Section 4(e) provides:

> "Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified."

The purpose of this provision is to insure that the customers will be made whole in the event the Commission should ulti-

mately disapprove all or any part of the proposed rate increase. However, the Act leaves it

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to the discretion of the Commission to determine whether a bond should be required, and the character and amount of such bond.

There are no Commission rules or regulations relating to the imposition of bond requirements under the above provision of the Act, and the authority of the Commission thereunder has heretofore been exercised on an *ex parte* basis, without public hearing. However, the Commission has developed and followed what it regards as reasonable and appropriate standards in exercising its discretion, and the Examiner will be governed by such standards in this proceeding.

The Examiner takes administrative notice of the fact that the Commission practice in independent producer rate cases, where a proposed rate increase has been permitted to become effective after a suspension period, has been as follows:

1) The Commission has first considered the financial responsibility of the company. Where the financial responsibility of the company appears to be such as to provide its own guaranty that adequate funds will be readily available for any refund which may ultimately be required, the Commission has dispensed with the bond requirement and accepted a mere corporate undertaking.

2) Where this is not the case, the Commission has required the company to file a corporate surety bond. In that event the amount of the bond is fixed at the estimated differential between the revenues under the old rates and the revenues under

the proposed new rates, for the twelve-month period following the date the rate increase is

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permitted to become effective.[3]

In the instant case the Commission by its order of April 7, 1955 required Dorchester to file a corporate surety bond. The amount of the bond was fixed at $41,000, which is the approximate equivalent of the differential between the revenues for one year at the proposed 10¢ rate and at 9.8262¢ per Mcf, on the basis of the volumes of gas delivered during the year preceding March 1, 1955.[4] However, this action was taken prior to the decision of the United States Supreme Court holding the Oklahoma minimum price order to be invalid. If, as a result of the invalidity of the Oklahoma minimum price order, the effective rate as of June 7, 1954 for gas delivered to Natural under the contract of December 1, 1946 was 6.253¢ per Mcf, as contended by Natural, rather than 9.8262¢ as contended by Dorchester, the one-year differential in revenues to be considered in fixing the amount of the bond would be approximately $742,000.[5] Natural contends that, under these circumstances, the $41,000 bond previously required of Dorchester is inadequate.

There thus appear to be two issues in this case:

[3]See statement by Staff Counsel of the Commission (Tr. 320-328), and Commission action in other cases cited on page 9 of Staff Counsel's brief herein. Also see Commission's order issued August 11, 1955, *In the Matter of Orange Grove Oil & Gas Co. et al.*, Docket No. G-8518.

[4]The actual volume of gas sold and delivered during the twelve months preceding March 1, 1955 was 25,526,069 Mcf (Tr. 62). 25,526,069 times .1738¢ (10¢ minus 9.8262¢) equals $44,364.31.

[5]This will be developed in greater detail at a later point in this decision.

[1271]

I. Whether the effective rate as of June 7, 1954 for gas delivered to Natural under the contract of December 1, 1946 was 9.8262¢ per Mcf, as contended by Dorchester, or 6.253¢ per Mcf as contended by Natural.

II. If the effective rate as of June 7, 1954 was only 6.253¢ should Dorchester be required to file a surety bond in an amount higher than the $41,000 fixed by the Commission in its order of April 7, 1955 and, if so, what amount should be required?[5]

## I. THE EFFECTIVE RATE AS OF JUNE 7, 1954

The gas purchase contract of December 1, 1946 (Item A by reference) between Dorchester's predecessor, Harrington & Marsh, and Natural was for a term running to January 1, 1965, and as long thereafter as Sellers were able to deliver gas in paying quantities, subject to cancellation by Natural on January 1, 1965, or the first day of any year thereafter (Article Nineteenth). Prices were fixed as follows (Article Sixth, par. 1):

(a) Until the first day of July, 1951, 5.36¢ per Mcf.

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(b) From July 1, 1951 to July 1, 1956, 6.253¢ per Mcf.

[5]It should be noted that the adequacy of this bond is not of interest solely to Natural, as suggested by Dorchester, but may be of real significance to the customers of Natural in the event a refund by Dorchester should ultimately be ordered. The order issued by the Commission on April 1, 1955 in Natural's last completed rate case, Docket No. G-2302, included provisions insuring that any refunds thereafter made to Natural by Panoma, or its successor, Dorchester, should be passed on to Natural's customers, and Natural's counsel confirmed this obligation on the record in the instant hearing (Tr. 152-154). It may reasonably be assumed that a similar provision will be included in any final order issued by the Commission in Natural's currently pending rate case, Docket No. G-3123.

(c) Commencing July 1, 1956, and for the remaining term of the contract, 7.145c per Mcf.[7]

Article Fourteenth of the contract provides:

"This contract is subject to present and future *valid* laws and present and future *lawful* orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation." (emphasis supplied)

The parties themselves did not at any time thereafter enter into an agreement to modify the prices set forth above. However, on December 9, 1946 the Oklahoma Corporation Commission entered an order fixing a minimum price of 7c per Mcf for sales of gas at the wellhead, and by order of May 17, 1951 this 7c minimum price was made applicable to Natural's purchases of residue gas, retroactively to the date of the first order. Finally, on July 29, 1952 the Oklahoma Corporation Commission issued Order No. 26096 fixing the minimum price at 9.8262c per Mcf.

Natural carried its attack on the validity of these orders to the United States Supreme Court, and the Court held both orders

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affecting Natural to be invalid in a *per curiam* opinion entered on April 11, 1955 in *Natural Gas Pipeline Co. of America* v. *Panoma Corporation et al, supra*. The Court there stated:

[7]For uniformity the contract prices, which are there quoted at 16.4 psia, are here converted into 14.65 psia.

"We held in *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, that such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one.

"We disagree with the contention of the appellees that *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, 340 U.S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190, are applicable here. In those cases we were dealing with constitutional questions and not the construction of the Natural Gas Act. The latter question was specifically not passed upon in those cases."

In view of the holdings of the Supreme Court in *Phillips Petroleum Company* v. *Wisconsin*, and *Natural Gas Pipeline Co. of America* v. *Panoma Corporation et al, supra*, there can be no doubt that the Oklahoma minimum price orders referred to above were void, and accordingly did not modify the contract prices in any way.

"The general rule is that an unconstitutional statute . . . is in reality no law, but is wholly void, and in legal contemplation is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted."

* * *

"Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights . . ." 11 Am. Jur., Sec. 148, p. 827

* * *

[1274]

". . . where Congress has legislated upon a subject which is within its constitutional control and over which it has the right to assume exclusive jurisdiction and has manifested its intention to deal therewith in full, the authority of the states

is necessarily excluded, and any state legislation on the subject is void." 11 Am. Jur., Sec. 8, p. 307.

* * *

"By reason of the provision of the United States Constitution that the Constitution and laws passed in pursuance thereto shall be the supreme law of the land, if a law passed by a state in the exercise of its acknowledged powers comes into conflict with an act of Congress, the state law must yield. . . . It is very obvious that where Congress has under the Federal Constitution the right of exercising exclusive jurisdiction and puts forth its power to cover the field, state legislation ceases to have efficacy; for when Congress passes a law in that field of legislation common to both Federal and state governments, the act of Congress supersedes all inconsistent state legislation." 11 Am. Jur., Sec. 175, p. 872.

**Voluntary Payment Theory**

Dorchester contends, however, that regardless of whether the Oklahoma minimum price order was valid or invalid, the effective rate as between the parties within the meaning of Section 154.92(a) of Order No. 174-A was 9.8262c per Mcf, under a theory of "voluntary payment." In this connection, Dorchester cites the

". . . universally recognized rule that money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal. . . ." 40 Am. Jur., Sec. 157.

Dorchester then proceeds to argue that the payments made by Natural at the 9.8262c rate were "voluntary" payments, and not under legal compulsion or coercion, and that accordingly Natural could not recover these payments, despite the fact

[1275]

they were made under protest.

We are not concerned here with the question whether an action would lie by Natural against Panoma or Dorchester for recovery of the overpayments made by Natural under protest. It is therefore not necessary to determine whether these payments were made under coercion or compulsion, within the doctrine of "voluntary payment." We are concerned only with the question as to what was the legally effective rate under the gas purchase contract as of June 7, 1954. As noted previously, there is no contention here that the contract rate of 6.253¢ was ever modified as the result of any agreement between the parties. The only other way in which the contract rate could have been modified prior to June 7, 1954 was as the result of some valid law or lawful order of an appropriate regulatory body. Since the Oklahoma minimum price order was invalid, it could not modify the contract rate in any way. Therefore, the legally effective rate as of June 7, 1954 was 6.253¢, and the question whether Natural under the law of "voluntary payment" could now recover the overpayments from Panoma or Dorchester is not relevant.

In addition, however, it is difficult to see how it can be contended that Natural's payments at the 9.8262¢ rate were in fact voluntary payments, or that Natural waived its objection to the validity of such rate in any way.

Natural's dealings were with Panoma up to July 1, 1954. Effective

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on that date, and by means of a series of transactions more fully described hereinafter, the properties of Panoma passed into the hands of Dorchester, and on the same date Dorchester assumed the contract of December 1, 1946 with Natural, and continued to make deliveries thereunder.

Throughout this period, from the time of the first Oklahoma minimum price order applicable to Natural, that company consistently maintained its position that the effective rate under the contract of December 1, 1946 was no higher than 6.253¢ per Mcf. When the Oklahoma Corporation Commission on May 17, 1951 entered an order making the 7¢ minimum price applicable to Natural's purchases of residue gas under that contract, Natural resisted this order in the courts and never actually made any payments at the 7¢ level. After the Oklahoma Corporation Commission on July 29, 1952 issued Order No. 26096 fixing the minimum price at 9.8262¢ per Mcf, Natural asserted the invalidity of this order and its purpose to litigate it, in a letter to Panoma dated September 9, 1952 (Exhibit 1). In that letter Natural referred to the fact that Panoma construed the Oklahoma minimum price order as requiring it to discontinue deliveries of gas to Natural unless payments were made at the 9.8262¢ rate, and that Natural required uninterrupted deliveries of such gas in order to fulfill its obligations to its customers. It therefore stated that it would begin making payments at the 9.8262¢ price, but that payments of all sums in excess of the

[1277]

contract price would be made involuntarily and under protest, although there would not be an express repetition of the protest, and the grounds thereof, at the time of each such payment. Pursuant to this understanding, Natural thereafter made its monthly payments to Panoma at the 9.8262¢ rate, as reflected on the invoices, until Dorchester assumed the contract as of July 1, 1954.[8]

[8]These facts suggest the question whether the overpayments were not therefore made under "business compulsion," and accordingly to be regarded as "involuntary payments." 40 Am. Jur., Sec. 171, p. 831.

The first payment for deliveries by Dorchester fell due on August 20, 1954 (Tr. 285). Prior to that time, by letters dated July 29 and August 11, 1954 (Exhibits 3 and 5), Natural made clear its position to Dorchester that the Oklahoma 9.8262¢ minimum price order was, in its view, invalid and that payments to Panoma at this rate had been made under protest. Dorchester, however, did not accede to this position. As a result, Natural made its first payment to Dorchester, which fell due August 20, 1954, and succeeding payments at the contract price of 6.253¢ per Mcf (Exhibit 7). It was not until December 8, 1954, after the conditional acceptance by the Commission in its order of November 30, 1954 of the Dorchester rate schedule including the 9.8262¢ minimum price order, that Natural recommenced payments at the 9.8262¢ rate to Dorchester, with a letter reaffirming its protest (Exhibit 9).

**Estoppel Theory**

In addition to the "voluntary payment" theory, referred to above,

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Dorchester aiso seems to contend that Natural was under some legal obligation to inform it that Natural was contesting the validity of the Oklahoma 9.8262¢ minimum price order, before Dorchester acquired its interest in the Panoma properties and assumed the gas purchase contract on July 1, 1954; that Natural failed to so inform Dorchester; and that as a result of such omission Natural is now estopped from questioning the validity of the 9.8262¢ rate.

The short answer to this contention is that under Order 174-A the sole question to be determined is what was the effective rate as of June 7, 1954. Dorchester did not acquire any interest in the properties or assume its obligation under the gas purchase contract with Natural until a subsequent date, July

1, 1954. If the effective rate on June 7, 1954 was 6.253¢, that rate could thereafter be increased in only one way—i.e., pursuant to the requirements of Section 4 of the Act (and Sec. 154.94(a) of Order 174-A). It could not be changed as the result of any conduct of the parties occurring after June 7, 1954.

However, even if we were to treat the conduct of the parties *after* June 7, 1954 as having some bearing upon this problem, Natural's conduct does not provide the basis for an estoppel argument of any kind. As noted previously (and as will be set forth in greater detail in a later portion of this decision), Dorchester acquired the Panoma properties and assumed the obligations of the gas purchase contract with Natural by a series of transactions which took effect on July 1, 1954.

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Dorchester contends that it paid substantial consideration and assumed substantial obligations in this transaction, relying on its assumption that the contract rate in the gas purchase contract with Natural was 9.8262¢; that the price being actually paid by Natural and reflected on all invoices at that time was 9.8262¢; that Dorchester had no knowledge, and was not advised by Natural until some time after July 1, 1954 that Natural was disputing the validity of the 9.8262¢ price with Panoma.

It is conceded that Natural did not advise Dorchester directly as to its position with regard to the 9.8262¢ rate prior to its letter of July 29, 1954 (Exhibit 3).[9] However, there is no basis for suggesting that Natural had any legal responsibility to communicate any information to Dorchester prior to that time. Dorchester's dealings were entirely with the stockholders of Panoma (Harrington, et al), from whom it acquired the properties, including the gas purchase contract with Natural. Any

[9]But there is also no contention that anyone connected with Natural misled Dorchester by any statement on this subject (Tr. 247).

responsibility for disclosure as to the character of the assets being purchased by Dorchester rested upon the assignors, Harrington et al.

Dorchester's counsel in the negotiations involving the acquisition of the Panoma properties was Mr. James A. Flannagan. Flannagan testified that at some stage of the negotiations prior to the closing he did inquire of Harrington as to whether there were any problems

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between Panoma and Natural with respect to the Oklahoma 9.8262¢ minimum price order, and that Harrington answered in the negative (Tr. 242,250). Despite Dorchester's contention that its assumption as to the 9.8262¢ rate was a basic factor in its entering into the deal, Flannagan testified that he did not thereafter pursue the matter further (Tr. 243), and Dorchester did not make any attempt to contact representatives of Natural (Tr. 238).[10]

It is of interest to note in this connection that although Natural, as pointed out above, did not have any legal responsibility to inform Dorchester of its position with regard to the Oklahoma minimum price order prior to the closing date of the Dorchester-Panoma transaction, nevertheless Natural's counsel, Clarence H. Ross, did convey such information about a week prior to the closing date to the appropriate official of the Mutual Life Insurance Company, which played a major role in the financing of the entire transaction. The Mutual official stated that he was aware of the situation and did not express

[10]This was in spite of the fact that a few weeks before the closing date in the Dorchester deal, the United States Supreme Court had handed down its decision in *Phillips Petroleum Company* v. *Wisconsin*, *supra*, holding that sales in interstate commerce by independent producers were subject to the exclusive regulation of the Federal Power Commission and could not be regulated by a state.

any further interest in the matter (Tr. 235, 237, 272, 273 and 283).

**"Initial Filing" Theory**

Dorchester further argues that, despite the subsequent holding of the United States Supreme Court that the Oklahoma minimum price law

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was invalid, its original rate filing on October 28, 1954 was made in full conformity with Order No. 174-A and consequently was not subject to rejection or suspension. It contends that it had the right under Section 4 of the Natural Gas Act to file whatever initial rate it might determine to be proper; that its initial filed rate was 9.8262c per Mcf; that since this was an initial filing, the Commission had no authority under the Act to condition or suspend such filing, and could not condition such initial rates upon the happening of an event in the future (i.e., the subsequent Supreme Court decision) so as to make a different rate applicable retroactively to the date of filing.

This argument misconceives the nature of the filing under Section 154.92(a) of Order No. 174-A. "Initial rates" are rates filed with respect to a new service proposed to be instituted initially. The filing required under Section 154.92(a) is not of that character at all, but rather may be characterized as a "compliance" filing, with respect to services already being rendered as of June 7, 1954. In issuing Order No. 174-A the Commission recognized that under the *Phillips* decision, *supra*, independent producers had been subject to the requirements of the Natural Gas Act long prior to June 7, 1954. However, in order to bring independent producers into compliance with the Act on a realistic and equitable basis, the Commission elected in Order No. 174-A to accept as lawful those rates which were legally

effective and binding as between buyer and seller on June 7, 1954 as a result of

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the parties' own contractual undertakings, even though such rates had not previously been filed with the Commission, or approved (in the case of rate changes), as required by the Act. Thus independent producers were not made subject to any penalties or disadvantages as a result of their noncompliance with the Act prior to June 7, 1954. However, it clearly was not intended that they should be in any *more* advantageous position with respect to the situation prior to that date than that resulting from their own contractual undertakings.

Accordingly, Section 154.92(a) provided that every independent producer who, on or since June 7, 1954, had engaged in the interstate transportation or sale of natural gas should on or before October 1, 1954 file with the Commission rate schedules setting forth all rates and charges for such transportation or sale "effective on June 7, 1954," and Section 154.93 defined "rate schedule" as "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954." Section 154.94(a) provided:

> "No change shall be made in any rate, charge, or service in effect on and after June 7, 1954, for the interstate transportation or sale of natural gas in interstate commerce . . . by any independent producer . . . without first filing a change in rates pursuant to section 4(d) of the Natural Gas Act and in accordance with this section."

Under the above provisions, if the effective rate as of June 7, 1954 for gas delivered to Natural under the contract of December 1, 1946 was 6.253¢ per Mcf, and not 9.8262¢, only the 6.253¢ rate could be filed as the "compliance rate" under Section 154.92(a), and no change

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could be made in that rate except pursuant to Section 4(d) of the Act and Section 154.94 of Order No. 174-A. Accordingly, the Commission's order of November 30, 1954, permitting the filing by Dorchester of the 9.8262¢ rate "subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings," did not in any way constitute the rejection or suspension of an "initial rate." On the contrary, it represented the only fair way of handling Dorchester's filing under Section 154.92(a) of Order No. 174-A in view of the fact that the question as to the validity of the Oklahoma minimum price order was then pending before the Supreme Court for decision. The Supreme Court's decision of April 11, 1955, holding the Oklahoma minimum price order to be invalid, finally resolved that question, and Dorchester's attempt to increase the rate from 6.253¢ per Mcf to 10¢ will now be the subject of a rate hearing under Section 4(e) of the Act, as to which no specific date has yet been scheduled.

## II. WHAT IS AN APPROPRIATE BOND, IN THE LIGHT OF AN EFFECTIVE RATE OF 6.253¢ PER MCF?

We are thus confronted with a situation in which the Dorchester rate hearing, which the Commission order of December 29, 1954 directed to be held concerning the lawfulness of Dorchester's proposed changes in rates and charges, will involve the differential between a 6.253¢ rate and the proposed 10¢ rate. The question to be determined here

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is whether the $41,000 corporate surety bond required of Dorchester in the Commission's order of April 7, 1955 is an adequate and appropriate bond in the light of this situation and

the facts established at the hearing just concluded as to Dorchester's financial responsibility.

**The Applicable Annual Differential in Revenues**

As noted previously, the $41,000 bond represented roughly the amount of the annual differential between revenues at 9.8262¢ per Mcf and revenues at 10¢. However, the applicable annual differential between revenues at 6.253¢ per Mcf and at 10¢, which is the differential now governing this case, is, in the opinion of this Examiner, approximately $742,000.

Natural contends that a corporate surety bond should be required of Dorchester in the amount of $900,000, commensurate with its potential refund liability. This $900,000 figure is based upon testimony of Albert S. McKenzie, an Assistant Vice President of Natural, who testified that the volume of gas actually delivered to Natural under the instant contract during the 12 months *prior* to March 1, 1955 was 25,526,069 Mcf (Tr. 62). The differential for this volume, as between revenues at 6.253¢ and revenue at 10¢, would amount to $958,245 (Tr. 74).

Since the purpose of the bond provision in Section 4(e) of the Act is to insure that company customers will be made whole in the

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event the Commission should ultimately disapprove all or any part of the proposed rate increase, it would seem clear that the potential refund liability of the company should be related to estimated deliveries for the 12-month period *following* the date on which the proposed new rate was permitted to become effective. It may be true, as contended by Natural, that the amount of gas to be delivered during the year following the effective date of the increased rate will frequently be the approximate equivalent of the volume delivered during the preceding year,

and under such circumstances it would be appropriate to use *actual* delivery figures for the preceding 12 months. However, in the instant case the Natural witness and the Dorchester witness both agreed that the expected deliveries for the year *following* March 1, 1955 would be substantially lower than the figures for the preceding 12 months.

J. G. Eckel, Vice President and General Manager of Operations for Dorchester, testified that his best estimate was that 19,800,000 Mcf of gas would be produced and delivered to Natural by Dorchester in the 12 months succeeding March 1, 1955 (Tr. 299,300). The applicable differential based upon this volume would amount to $741,906.

Eckel stated that the volume of production and deliveries depended upon the allowables arrived at by the Oklahoma Corporation Commission; that he had been associated with the producing properties since the plant started operating in 1948, and that the allowables had

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been quite a bit lower in recent years than they were during the early periods; that, based on his past experience, the average daily allowables would average a little over 54 million cubic feet per day for the year following March 1, 1955[11]; that his estimate of 19,800,000 Mcf deliveries for that period was based upon this allowables figure (Tr. 299-304).

Upon being asked by Dorchester's counsel whether he concurred or disagreed with Eckel's estimate of the situation, McKenzie stated:

"Based on the facts that I have available, I would say that the figures that he has used are probably somewhere in

[11]Actual deliveries for the preceding 12-month period averaged approximately 70 million cubic feet per day (Tr. 93).

the vicinity, let us say, of what actually will happen." (Tr. 305)

When subsequently pressed by his own counsel to indicate more precisely what he meant by this statement, McKenzie stated:

"In my own opinion, based on figures that I have available, I would say that it would probably run a little bit more than that, but not an excessive amount." (Tr. 307)

Natural's counsel then asked:

"MR. ROSS: Do you mean a billion feet, or what do you mean?

"THE WITNESS: My best estimate, based on the information that I have, I would assume that the delivery during that 12 months would run between 20 and 21 billion feet for that 12 months period." (Tr. 307)

If McKenzie's figure of between 20 and 21 billion feet is used, the

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applicable differential would be approximately $768,000 (see page 33 of Natural's initial brief in this proceeding), which is only $26,000 higher than the differential based upon Eckel's testimony.

Bearing in mind the fact that McKenzie, unlike Dorchester's witness Eckel, is not a production man, that he was not closely acquainted with the allowables situation in the field (Tr. 93, 94, 309), and the uncertain nature of his explanation as to the differential between his estimate and that of Eckel (Tr. 308, 309), the Examiner regards the estimate of witness Eckel as more reliable. It is accordingly found that the applicable revenue differential, and the potential refund liability of Dorchester, amounts to approximately $742,000.

Dorchester argues, however, that in determining the instant proceeding the situation should not be viewed in the same light as might have been appropriate prior to March 1, 1955; that at this late date it would be unrealistic to assume that twelve months would still be required for a determination of the Dorchester rate case; that accordingly the bond requirement should not be based upon any 12-months differential in revenues. The difficulty with this argument is that the issue here is not as to the amount of refund which might potentially be required for the period from and after the date of the instant decision. Dorchester has in fact been collecting at the 10¢ rate since March 1, 1955. Accordingly whenever a hearing is held in

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the Dorchester rate case and the Commission issues its final decision, if the 10¢ rate should be disapproved the refund requirement would apply to all overpayments *from and after March 1, 1955.*

**The "Prima Facie" Reasonable Rate Theory**

Dorchester also argues that even if its June 7, 1954 effective rate *was* 6.253¢ per Mcf, with a resultant differential of $742,000, the fixing of a bond by the Commission under Section 4 of the Act is entirely discretionary; that under the circumstances of this case a bond in excess of $41,000 would not be justifiable or appropriate.

Dorchester contends, in this connection, that the Commission in exercising its discretion as to the amount of the bond to be required, should not look mechanically to the differential between the proposed new rate and the existing rate, but rather should direct its attention to what appears to be *prima facie* a just and reasonable rate for the gas. Dorchester contends that the proposed rate of 10¢ for gas produced from the

Guymon-Hugoton Field is greatly below prices being paid for similar volumes of gas in that field and any other comparable area; that the proposed 10¢ rate is therefore *prima facie* a just and reasonable rate and represents a fair market price for the gas in the field where produced; that under these circumstances no bond in excess of a merely nominal amount is required or justified for Natural's protection.

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At the outset it should be stated that a determination as to the just and reasonable rate for the Dorchester gas, whether on a *prima facie* basis or any other basis, has no proper place in this proceeding. The Commission's order of December 29, 1954, which originally suspended Dorchester's proposed change in rates, stated:

> "The increased rates and charges proposed in the aforesaid filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful . . ."

The Commission therefore found:

> "It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes . . ."

Accordingly, it was ordered that a public hearing be held upon a date to be fixed by further notice concerning the lawfulness of said proposed changes in rates and charges. No such hearing has yet been held, or scheduled.

Under the filed rate procedure set forth in Sections 4(d) and 4(e) of the Natural Gas Act, the Commission is not required to enter upon a hearing in all cases where a proposed change in rates is filed by a company. However, if the Commission's preliminary study of the proposed increase indicates that it

may be unlawful, it is the Commission's practice to issue an order directing that a public hearing be held concerning the lawfulness of the proposed rate change, as was

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done in the instant case. In the face of such a finding by the Commission in its order of December 29, 1954 in the instant case, it would be completely improper for the Examiner in this proceeding to indulge in any speculation or to make any finding, even on a "prima facie" basis, as to what might be the just and reasonable rate for the Dorchester gas. It should finally be noted that the Commission hearing order of May 20, 1955, under which the instant proceeding was held, limited this hearing to "the matters involved and the issues presented in the petition for reconsideration filed by Natural in this matter on April 21, 1955."

For the reasons outlined above, the Examiner excluded all evidence offered by Dorchester relating to the issue of what constitutes a just and reasonable rate for the gas delivered by Dorchester to Natural. Exhibits 17, 18 and 19 were excluded on this basis.[12]

[12]It is interesting to note that an argument similar to Dorchester's "prima facie" theory was advanced by another rate applicant. *In the Matter of Orange Grove Oil & Gas Co.*, Docket No. G-8518, in its Application for Rehearing filed with the Commission on March 25, 1955. That case involves a proposed change in rates from 6.5¢ per Mcf to 12¢ per Mcf, and Orange Grove pointed out in its Application for Rehearing that current prices being paid by other large purchasers in the same Railroad Commission District of Texas were in the neighborhood of 12¢ per Mcf, or slightly higher. Nevertheless, the Commission issued an order on August 11, 1955 in Docket No. G-8518, providing that Orange Grove should file a corporate surety bond "for an amount equal to the estimated annual increase proposed by Applicant"—i.e., the sum of $238,000.

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**Dorchester's Financial Position**

It therefore becomes necessary to consider whether the financial responsibility of Dorchester, as established by the record in this proceeding, is such as to provide its own guaranty that adequate funds would be available to make a refund up to $742,000 in the event such a refund were ultimately required after the conclusion of the pending Dorchester rate case.

This requires first an understanding of the varied and complex transactions under which the Panoma properties passed into the hands of Dorchester, and Dorchester assumed the gas purchase contract with Natural. All of these transactions, as hereinafter described, were closed simultaneously and took effect as of July 1, 1954.[13]

Panoma was liquidated and its assets distributed to its stockholders (hereinafter referred to as "Harrington, et al."). These properties consisted of two groups: (1) two gasoline extraction plants, a gathering system, tank cars and similar equipment; and (2) developed leaseholds in Oklahoma, Kansas and Texas.[14] The first group was sold by Harrington, et al., to Dorchester for a total consideration of $6,500,000. Of this amount, $3,500,000 was represented by notes secured by a purchase money mortgage. The remaining $3,000,000 was

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paid in cash, of which Dorchester raised $2,500,000 by a loan from the Chase National Bank, secured by a first mortgage on the plants. The principal payments on the Harrington pur-

[13]Exhibit 11.

[14]The contract with Natural relates solely to reserves and production in Oklahoma. The sales to Natural account for about 75% of the total sales of gas (Tr. 176).

chase money mortgage are deferred during repayment of the Chase National Bank loan. Simultaneously with this transfer, Harrington, et al., and Dorchester entered into a processing agreement under which Dorchester undertook to process the gas produced from the leaseholds and to deliver the residue gas to Natural and the other purchasers. This processing agreement provided that Harrington, et al., would have a 45% interest in the proceeds of the liquid hydrocarbons taken from the gas during the processing, with the remaining 55% to be retained by Dorchester.

The other group of properties, i.e., the developed leaseholds, followed a different course into the possession of Dorchester. They (except for the horizons below sea level) were first sold by Harrington, et al., to Nalam Corporation for $37,000,000 in cash. In addition, Harrington, et al., reserved a junior production payment of $75,000,000, payable out of the proceeds of production from the leaseholds after the satisfaction of certain prior obligations which will hereinafter be described. This transfer carried with it to Nalam the processing agreement and the 45% interest in the liquid hydrocarbons.

Nalam Corporation simultaneously sold and transferred the leaseholds to Dorchester. The consideration for this purchase was

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$2,000,000 in cash, together with a senior production payment reserved to Nalam (to be described hereafter), which was designed to provide the money to pay off the sum of $35,000,000 which had been borrowed by Nalam from the Metropolitan Life Insurance Company (Metropolitan) and The Mutual Life Insurance Company of New York (Mutual) to make the cash payment to Harrington, et al., for the leaseholds. The Nalam loan from Metropolitan and Mutual was se-

cured by a first mortgage under which the First National Bank in Dallas, Texas, serves as trustee. Dorchester acquired the leaseholds subject to this $35,000,000 mortgage, but did not assume any personal liability with respect to that obligation. The mortgage also covers the 45% interest in the proceeds from the liquid hydrocarbons which had originally been reserved by Harrington, et al., in the processing agreement. At the same time, Nalam Corporation sold and transferred to Cortez Corporation, for the sum of $25,000 in cash, the production payment reserved by it in the sale of the leaseholds to Dorchester, and Cortez assumed the $35,000,000 mortgage. Dorchester, with Natural's consent, received an assignment of the gas purchase contract and assumed the obligations of Panoma thereunder. The interest of Harrington, et al., in the processing agreement with Dorchester passed with the transfer of the leaseholds.

According to Flannagan, Dorchester's counsel in these negotiations, the complicated series of transactions outlined above was

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employed in place of a direct purchase by Dorchester from the Panoma stockholders, in order to minimize the tax impact (Tr. 158–160). The net effect of the transactions was that Dorchester emerged as the owner and operator of both groups of properties formerly owned and operated by Panoma. The first group was subject to the $2,500,000 mortgage given by Dorchester to the Chase National Bank, to which mortgage the purchase money mortgage given to Harrington, et al., has been subordinated. The leaseholds in the second group of properties are subject to the $35,000,000 first mortgage given by Nalam Corporation to secure the loan by the insurance companies, although the personal obligation on that loan rests upon Cortez and not Dorchester. The leaseholds are also, of course, subject

to the senior and junior production payments respectively held by Cortez and Harrington, et al.

Interest on the loan to the insurance companies is currently payable at the rate of 5% per annum. There is also an obligation to pay deferred interest, at the conclusion of the repayment of the principal, at the rate of 3⅛% per annum; and interest at the rate of 5% is due at that time on the amount of the deferred interest. Under the mortgage securing this loan, Natural has been directed to, and does each month pay the entire amount of the invoice for gas delivered to it under the contract to the First National Bank in Dallas, which in turn remits 3½% to Dorchester (Tr. 74-5, 171, 173-4).

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Under the senior and junior production payment reservations referred to above, the proceeds of production are to be allocated in substantially the following manner (Exhibit 11, Part 4):

(1) 96½% of the proceeds of the production is devoted to the payment of $434,250, representing the costs of setting up the transactions.

(2) After payment of the amount above referred to, 96% of production is devoted to the generation of $35,000,000, plus interest at 5%, which goes to the insurance companies through the channel of the liquidation of the senior production payment; and ½ of 1% goes to Cortez Corporation until it has received $250,000, plus 5% interest.

(3) After the $35,000,000, plus 5% interest, is paid to the insurance companies, 86½% of production goes to Cortez until payment of the above $250,000, plus 5% interest, is completed. Simultaneously, 10% (which successively increases over the years to 19%) is devoted to paying to the insurance companies the 3⅛% deferred interest on the $35,000,000, plus 5% interest on that deferred interest. When the payments to Cortez are completed in this cycle,

90% begins to flow to Dorchester until it has received approximately $2,750,000, plus 5% interest.

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(4) After Dorchester has received this last-mentioned sum, 80% of production in the first instance begins to be applied to the $75,000,000 junior production payment reserved by Harrington, et al.

At the present time, and until the insurance company loans are paid off (which will take from 25 to 30 years, according to testimony by the president of Dorchester, Tr. 209), Dorchester is receiving, and will receive each month only 3½% of the proceeds of the dry gas sold from these properties. Actually, since payments due the royalty owners account for approximately 20% of the proceeds, Dorchester gets in hand each month only 3½% of 80% of the proceeds of dry gas sales (Tr. 174). Its only other significant source of income is the 55% interest which it has in the proceeds of the liquid hydrocarbons under the processing agreement, plus 3½% out of the remaining 45% interest in the hydrocarbon proceeds (Tr. 121, 175). In the meantime, all of the expenses of the entire operation, including the operation of the leaseholds, the gathering of the gas, the operation of the extraction plants and related equipment, and the delivery of the dry gas to the pipeline purchasers, are required to be paid by Dorchester. In addition, Dorchester has other obligations to which these sources of income must also be devoted, including the payment of interest and the repayment of principal on the $2,500,000 loan from the Chase National Bank, and its current

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interest obligations on the loan from Harrington, et al., and on a $2,600,000 loan from its parent, Oil and Gas Property Management, Inc.[15]

[15]As will be later noted, interest payments on the two loans last mentioned are not being made at the present time.

Dorchester's president, John Crichton, testified that Dorchester presently has approximately $450,000 in cash, and will have approximately the same amount on January 1, 1956 (Tr. 169, 186, 187). However, even that amount would not be free and available to pay a potential refund liability of up to $742,000, in view of Dorchester's other substantial obligations, some of which have already been referred to above. It is true that Dorchester has negotiated a forbearance of interest agreement with Harrington, et al., with respect to the interest due on April 1 and July 1, 1955 on the $3,500,000 purchase money obligations held by them. However, no such agreement has been reached with respect to the future interest payments, and Harrington, et al., are free to terminate their forbearance at any time and to cause all sums of interest which have accrued to become due and payable within 30 days (Tr. 221, 222). The interest accruing on the $2,600,000 note held by Dorchester's parent, Oil & Gas Property Management, Inc., has not been paid at all. However, there is no forbearance agreement covering this obligation, and the situation could be changed at any time (Tr. 222, 223, 316).

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In addition, Natural has presented a claim against Dorchester with respect to the amounts paid by Natural in excess of the legally effective 6.253¢ rate during the period from July 1, 1954 to March 1, 1955 (the date on which the 10¢ rate was permitted by the Commission to become effective), and this claim with accruing interest already exceeds $580,000 (Exhibit 12, footnote 1).

On its face, Dorchester's latest balance sheet as of March 31, 1955 (Exhibit 12) shows an excess of current assets over current liabilities in the approximate amount of only $208,000. How-

ever, Dorchester's president testified that no depreciation had been accrued in respect of the first three months of 1955; that if such an accrual were made, the earned surplus item shown on the balance sheet would be reduced by approximately $150,000, or to a figure of approximately $58,000 (Tr. 206,207); and this is without reflecting in Dorchester's accounts the potential liability to Natural in excess of $580,000, referred to above.

It is also to be noted that an installment of $800,000 is due and payable on January 1, 1956 in respect of the principal of the $35,000,000 mortgage to which the leaseholds are subject; that the revenue from the gas purchase contract with Natural just barely generates sufficient funds at the 10¢ rate to meet this obligation and this could not be accomplished at the 6.253¢ rate (Tr. 189, 190); that if a default occurred on this mortgage the

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First National Bank in Dallas, as trustee, is empowered to withhold any remittances whatsoever from Dorchester in respect of the amounts paid monthly by Natural and other purchasers to the Bank for gas sold and delivered (Tr. 163, 164); and that such a default might result in foreclosure of the mortgage, with subsequent loss by Dorchester of the leaseholds, including its own residual equity in them (Tr. 201).

**Dorchester's Claim of Inability to Post a Substantial Bond**

Although Dorchester's precarious position, as outlined above, is obviously not such as to inspire confidence that adequate funds would be available to meet a potential refund liability of any magnitude, Dorchester pleads, in the nature of "confession and avoidance," that its financial position is such that it could not possibly meet any requirement for a surety bond in excess of $100,000. Dorchester's counsel states that bonding com-

panies are not in the risk business, and that they would not issue such a bond unless Dorchester had equivalent cash or securities which could be hypothecated immediately; that Dorchester is in no position to do this (Tr. 317–320), and that accordingly the imposition of a bond requirement in excess of $100,000 would place its entire operation in jeopardy.

It is to be noted that the position in which Dorchester now

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finds itself results in large measure from the fact that the onerous mortgage terms and the reserved production payments, outlined above, were keyed to Dorchester's anticipated revenue from the gas purchase contract at the 9.8262c rate. The deal under which these terms were arranged was closed on July 1, 1954, some weeks after the United States Supreme Court had handed down its decision in the *Phillips* case. Accordingly it seems clear that all parties to this complicated financial transaction were then aware that this gas purchase contract rate was subject to review and regulation by this Commission, and was not a static thing. It is also interesting to note again, as pointed out earlier in this decision, that around June 23, 24 or 25, 1954 Natural's counsel, Clarence H. Ross, called Jack King, Director of Oil and Gas Investments of the Mutual Life Insurance Company, who was in charge of the negotiations for Mutual. Mr. Ross informed King that Natural was contesting the validity of the 9.8262c rate. King replied that he was aware of the situation and that Mutual was going into the transaction with its eyes open, and he expressed no further interest in the matter (Tr. 272, 273 and 283).

It might well be said that, after cutting through the tangled web of these complicated transactions, the insurance com-

panies (Mutual and Metropolitan) appear from a realistic standpoint to be the real parties in interest in this entire situation. Yet,

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if the Commission ultimately should order a substantial refund in the Dorchester rate case, Natural obviously would not be in a legal position to look to the insurance companies for such a refund, and Dorchester has been so tied up that it is left with practically no free assets or income out of which a substantial refund could be collected from Dorchester itself.

It may be true, as contended by Dorchester's counsel, that bonding companies are not in the risk business. However, it is also true that Section 4(e) of the Natural Gas Act does not contemplate that the customers of the company filing a proposed rate increase should shoulder the risk of collecting any refund which may ultimately be required. Under Section 4(e) the burden of proof to establish that the proposed increased rate of 10¢ per Mcf is just and reasonable is upon Dorchester. The provision under which that proposed rate is allowed to become effective before that burden is discharged in the rate hearing contemplates that the customers of the company will not incur any irreparable loss as the result of such advance collection of the higher rate, in the event the Commission ultimately disapproves all or any part of the proposed increase. Dorchester's financial picture is such that, in the absence of a substantial surety bond, this protection to Natural contemplated by the Act would be absent. This, in the Examiner's view, is the governing consideration, and it requires that a corporate

surety bond in the amount of $742,000 be imposed if Dorchester is to be permitted to continue collection of the 10¢ rate pending ultimate disposition of its rate case.[16]

## FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner *finds and concludes*, in addition to the findings and conclusions hereinbefore stated, that

(1) The effective rate as of June 7, 1954, under the gas purchase contract of December 1, 1946, was 6.253¢ per Mcf, and not 9.8262¢ per Mcf.

(2) Therefore, the pending Dorchester rate proceeding involves a proposed rate increase from 6.253¢ per Mcf to 10¢ per Mcf.

(3) The annual differential between revenues at 6.253¢ and revenues at 10¢ for the 12-month period following March 1, 1955 (the date on which the proposed 10¢ rate was permitted to become effective) would amount to approximately $742,000.

(4) Dorchester's financial responsibility is not such as to provide its own guaranty that adequate funds would be available to make a refund up to $742,000

[16]In imposing this requirement the Examiner recognizes that Mutual and Metropolitan, as holders of a $35,000,000 mortgage on the leasehold properties, have a substantial stake in Dorchester's continued collection of the 10¢ rate from Natural pending ultimate disposition of the rate case, since (according to Dorchester's testimony) there would not be sufficient revenues generated under the 6.253¢ rate to meet the payments due on that mortgage (Tr. 189–197). There accordingly should not be ignored the possibility that Dorchester, if necessary, may be able to obtain some outside assistance in meeting the bond requirement here imposed.

[1303]

in the event such a refund were ultimately required after the conclusion of the pending Dorchester rate case.

(5) Adequate protection to Natural, and its customers, as contemplated under Section 4(e) of the Natural Gas Act, accordingly requires that Dorchester be directed to file a corporate surety bond in the amount of $742,000.

## ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) Within twenty (20) days after the service of a copy of this decision, Dorchester Corporation shall execute and file with the Secretary of this Commission a corporate surety bond in the amount of seven hundred forty-two thousand dollars ($742,000), to replace the bond in the amount of forty-one thousand dollars ($41,000) which was required and filed by Dorchester under paragraph (D) of the Commission's order issued in this case on April 7, 1955. Such bond shall be conditioned as set out in paragraph (B) hereof, and shall be accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved.

[1304]

(B) By said corporate bond, Dorchester Corporation, its surety, and their successors and assigns, jointly and severally, shall be held and firmly bound unto the Federal Power Commission, for the use and benefit of those entitled thereto, in the sum of seven hundred forty-two thousand dollars ($742,000); and said bond shall contain the same provisions as set forth in the original $41,000 bond, except for the addition of an appropriate recital referring to the change in the amount of such bond.

(C) If Dorchester Corporation shall, in conformity with the terms and conditions of paragraph (B) of the Commission's order issued herein on April 7, 1955, make the refunds as may be required by the order of the Commission, the bond shall be discharged, otherwise it shall remain in full force and effect.

JOSEPH ZWERDLING
Presiding Examiner

Filed: September 14, 1955
Issued: September 14, 1955

[1308]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matter of
Dorchester Corporation } Docket No. G-6505

## ORDER FIXING DATE OF HEARING

On December 6, 1954, Dorchester Corporation (Dorchester) tendered for filing its Supplement No. 4 to its FPC Gas Rate Schedule No. 2, providing for an increase to 10¢ of its rate for gas sold to Natural Gas Pipeline Company of America (Natural). By order issued December 29, 1954, the Commission suspended the proposed change in rates until March 1, 1955, and directed that a hearing be held upon a date to be fixed by further notice concerning the lawfulness of such proposed changes in rates and charges.

The Commission *orders*:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Com-

mission by Sections 4, 15, and 16 of the Natural Gas Act, and the Commission's Rules and Regulations, including Rules of Practice and Procedure (18 CFR Chapter I), a public hearing be held commencing on October 11, 1955, at 10:00 a.m. (EST) in a hearing room of the Federal Power Commission, 441 G Street, N. W., Washington 25, D. C., concerning the lawfulness of the proposed change in rates and charges.

(B) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] of the Commission's Rules of Practice and Procedure.

By the Commission.

Leon M. Fuquay,
Secretary.

Adopted: September 28, 1955

Issued: September 28, 1955

[1309]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of

Dorchester Corporation } Docket No. G-6505

## PETITION FOR LEAVE TO INTERVENE

Natural Gas Pipeline Company of America (Natural) represents to the Commission as follows:

I

By its order, issued September 28, 1955, the Commission has directed that a public hearing be held on October 11, 1955, con-

cerning the lawfulness of the increased rate proposed in Supplement No. 4 to FPC Gas Rate Schedule No. 2 of Dorchester Corporation (Dorchester). This increase was permitted by the Commission to become effective on March 1, 1955, subject to further order of the Commission (and possible refund) after hearing.

Natural protested the amount of the bond required of Dorchester by the Commission in its order issued April 6, 1955; and, in anticipation of the hearings which the Commission directed to be held on that issue, it petitioned for

[1310]

leave to intervene in the proceedings, which request was denied by the Commission in its order of July 8, 1955 on the ground that Natural was already a party. There is some question, however, as to whether the Commission intended to confine its grounds of denial to the circumstances giving rise to the hearing on the bond; and, in view of the fact that the hearings with respect to the bond have been held, and of the Commission's action in now setting a hearing on the lawfulness of the rate increase, Natural feels it necessary as a precautionary measure to file this petition for leave to intervene.

II

The rate of Dorchester, which is the subject of the hearings now set for October 11, 1955, relates solely to sales of gas being made by Dorchester to Natural under a contract which has been filed by Dorchester as its Gas Rate Schedule No. 2. Natural has, accordingly, an interest which may be directly affected, and as to which it may be bound, by the Commission's action in the proceeding; and it is also an interest which is not adequately represented by existing parties. The gas which Natural purchases from Dorchester is transported and sold in interstate commerce

[1311]

for resale. The public interest is, therefore, also affected by the rate which Natural must pay for such gas.

WHEREFORE, Natural respectfully requests that the Commission enter an order permitting it to intervene as a party in these proceedings, with all rights appropriate to that status; or, alternatively, declaring that Natural has already acquired, and continues to have, such status.

Respectfully submitted,
NATURAL GAS PIPELINE COMPANY
OF AMERICA

By _____
Attorney

STATE OF ILLINOIS )
) ss
COUNTY OF COOK )

Carl McGowan, of lawful age, being first duly sworn, states that he is a member of the firm of Ross & O'Keefe, counsel to Natural Gas Pipeline Company of America; that he has read the foregoing petition and knows the contents thereof; that the facts set forth therein are true, as he verily believes; and that he has authority to file the same.

_____

Subscribed and sworn to
before me this 30th day
of September, A.D. 1955.

_____
Notary Public

[1312]

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Petition to Intervene of Natural Gas Pipeline Company of America upon Dorchester Corporation by mailing a copy thereof, properly addressed, postage prepaid, to its attorneys of record, as follows:

James J. Flanagan, Esq.
161 East 42nd Street
New York 17, New York

Gene M. Woodfin, Esq.
Esperson Building
Houston 2, Texas

Dated at Chicago, Illinois, this 30th day of September, 1955.

/s/ CARL MCGOWAN

Carl McGowan

[1382]

THIS DOCUMENT IS NOT FILED WITHIN THE TIME PRESCRIBED. IT IS ACCEPTED FOR FILING CONDITIONALLY.

RECEIVED Oct 11 1:33 PM '55
Federal Power Commission

**UNITED STATES OF AMERICA**
**FEDERAL POWER COMMISSION**

In the Matter of
Dorchester Corporation } Docket No. G-6505

**NOTICE OF INTERVENTION**

Now comes the Illinois Commerce Commission, a regulatory body within the State of Illinois, having jurisdiction under the law of Illinois to regulate the rates, charges, conditions of service, safety and other matters relating to the furnishing of natural gas to the public within the said State, and hereby gives notice that it intervenes in the above proceeding.

ILLINOIS COMMERCE COMMISSION

by _____
LATHAM CASTLE
Attorney General
of the State of Illinois.

by _____
HARRY R. BEGLEY
Special Ass't. Attorney General.

Dated at Chicago, Illinois this 10th day of October, 1955.

[1383]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

| | |
|---|---|
| In the Matter of | |
| Dorchester Corporation | Docket No. G-6505 |

**PETITION TO INTERVENE**

**OF**

**CITY OF CHICAGO**

JOHN C. MELANIPHY
ACTING CORPORATION COUNSEL
CITY OF CHICAGO
JOSEPH F. GROSSMAN Room 511 City Hall
J. J. DANAHER Chicago, Illinois
EARL E. MEISENBACH Tel.: Randolph 6-8000
Of Counsel Attorney for Intervenor

[1384]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of
Dorchester Corporation } Docket No. G-6505

## PETITION TO INTERVENE
## OF
## CITY OF CHICAGO

NOW COMES the City of Chicago (herein called Intervenor) and files this petition to intervene in the above proceedings as provided by the Natural Gas Act and in accordance with the general rules of practice and procedure of the Federal Power Commission and respectfully shows:

I

City of Chicago is a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois. Its corporate limits include all of the territory served by The Peoples Gas Light and Coke Company.

As of September 1, 1955, about 950,000 of its residents were direct customers of The Peoples Gas Light and Coke Company, and The Peoples Gas Light and Coke Company is the only public utility providing gas within the City of Chicago's corporate limits. During the year 1954 The Peoples Gas Light and Coke Company purchased from Natural Gas Pipeline Company of America and supplied to its customers 80,000,000 M.C.F. of natural gas and said purchases have and will continue to increase. Under the law of the State of Illinois, the price paid for said natural gas is a direct

[1385]

operating expense which must be allowed in establishing the rates charged the aforementioned customers, residents of the City of Chicago, for gas supplied by The Peoples Gas Light and Coke Company.

The said Natural Gas Pipeline Company of America is a direct purchaser of gas from the said Dorchester Corporation and any increase in the rates paid by the said Natural Gas Pipeline Company probably will increase the rates of the said Peoples Gas Light and Coke Company and be a direct charge on gas service furnished residents residing within the corporate limits of the City of Chicago.

The interest of City of Chicago in this proceeding is different from that of residents of other communities in the State of Illinois and is not adequately represented by existing parties. The City of Chicago therefore desires to intervene herein as the representative of its residents for participation in this proceeding as its interest may appear.

The notice of hearing in the above entitled matter was received by The City of Chicago on or about October 7, 1955, and it was therefore, not possible for the said city to file this Intervening Petition within ten days from the hearing date, to-wit: October 11, 1955.

II.

Intervenor's exact legal name and address are as follows:

CITY OF CHICAGO
City Hall
Chicago, Illinois

[1386]

III

The name, title and post office address of the person to whom all correspondence and communication in regard to the petition are to be addressed are:

Joseph F. Grossman
Special Assistant Corporation Counsel
Room 511–City Hall
Chicago, Illinois

WHEREFORE, City of Chicago prays that it be permitted to intervene herein and be treated as a party to this proceeding with all the rights appropriate to that status.

CITY of CHICAGO, a municipal corporation

BY_____
JOHN C. MELANIPHY
ACTING CORPORATION COUNSEL
Attorney for Intervenor

JOSEPH F. GROSSMAN
J. J. DANAHER
EARL E. MEISENBACH
Of Counsel

[1387]

**CERTIFICATE OF SERVICE**

J. J. DANAHER, being first duly sworn, on oath, deposes and says as follows: that he is Assistant Corporation Counsel employed in the Office of the Corporation Counsel, City of Chicago; that on, to-wit: the 11th day of October 1955 A.D. he served a copy of the above and foregoing Petition on the

parties by delivering a true copy thereof to the attorneys of record of said parties at the hearing room of the Federal Power Commission, Washington, D. C.

J. J. Danaher

Subscribed and sworn to before me this 11th day of October, 1955.

Notary Public, D.C.
Mary Jo Freehill

[1389]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Frederick Stueck and William R. Connole.

In the Matter of

Dorchester Corporation } Docket No. G-6505

**ORDER PERMITTING INTERVENTION**

On October 3, 1955, Natural Gas Pipeline Company of America filed a petition whereby it seeks leave to intervene in this proceeding.

The Commission *finds:*

The participation of the above-named petitioner in this proceeding may be in the public interest.

The Commission *orders:*

The above-named petitioner be and it hereby is permitted to become an intervener in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervener shall be limited to matters affecting asserted rights and interests specifically set forth in such petition for leave to intervene: and *Provided, further,* That the admission of such intervener shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

LEON M. FUQUAY,
Secretary.

Adopted: October 12, 1955
Issued: October 12, 1955

[1400]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matter of
Dorchester Corporation
Docket No. G-6505

## ORDER PERMITTING INTERVENTION

On October 11, 1955, City of Chicago filed a petition seeking leave to intervene, and Illinois Commerce Commission filed notice of intervention in this proceeding.

The Commission *finds:*

(1) The participation of the above-named petitioners in this proceeding may be in the public interest.

(2) Good cause has been shown to permit the late filing of said documents.

The Commission *orders:*

The above-named petitioners be and they hereby are permitted to become interveners in this proceedings, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such interveners shall be limited to matters affecting asserted rights and interest specifically set forth in such petition for leave to intervene: and *Provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

J. H. GUTRIDE

J. H. Gutride,
Acting Secretary.

Adopted: November 2, 1955

Issued: November 7, 1955

[1401]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole

In the Matter of
Dorchester Corporation } Docket No. G-6505

**Order Reversing Initial Decision of Presiding Examiner**

On September 14, 1955, the Presiding Examiner issued his initial decision, setting forth his findings, conclusions and decision on the determination of the amount of the surety bond which Dorchester Corporation (Dorchester) should be required to furnish in connection with its proposed rate changes which it sought to place into effect under bond. In reaching his conclusion as to the amount of the bond, the Presiding Examiner found and concluded on the basis of the record adduced that Dorchester's effective rate as of June 7, 1954, under Dorchester's Rate Schedule FPC No. 2, was 6.253 cents per Mcf (at 14.65 psia), and that the annual differential between revenues at 6.253 cents and the proposed 10¢ rate for the 12-month period following March 1, 1955 (the date on which the proposed 10¢ rate was permitted to become effective) would amount to approximately $742,000.

On October 4, 1955, Dorchester filed exceptions to said initial decision.

In our order of November 30, 1954, we, in an effort to avoid taking any steps which would affect either party's rights or

status in their pending litigation concerning the validity of the Oklahoma minimum price orders, stated that:

"In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.

"To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

[1402]

It is now clear that the precautions which we attempted to take were improper and of no avail. There can be only one filed rate under which a particular sale may be made. The rate which was filed was the 9.8262¢ rate which was the rate which actually was effective and was being paid by Natural to Dorchester's predecessor on June 7, 1954. Therefore, this filing complied with our Order 174-A. See *In the Matter of Cities Service Producing Company*, G-5788.

A policy of accepting rate filings tentatively, subject to later and final acceptance of the rate we found to be the proper one, would be unworkable administratively, and would be of questionable legality, particularly in view of Sec. 154.101 which provides that acceptance for filing of any rate schedule is not to be construed as approval.

The fact that the 9.8262¢ rate was paid under protest, or that a lesser amount was paid for a while shortly thereafter, or that the basis for the 9.8262¢ rate (the Oklahoma minimum price order) subsequently has been determined to be invalid, or any other facts pertaining to the equities between the parties does not require or permit us in this proceeding, to determine what the lawful or the just and reasonable rates should have been on June 7, 1954. The 9.8262¢ rate was the "effective rate" on June 7, 1954, within the meaning of Order No. 174-A.

The filing of this rate and our acceptance thereof for filing constitutes compliance with our order, but does not constitute a determination of the proper contractual rate or the just and reasonable rate. In order that all parties similarly situated may be treated alike, insofar as possible, the filed rate must be compared with the increased rate filed later, for the purpose of determining the amount of the bond which Dorchester must file, in order to place and keep its increased rates in effect. We therefore conclude that the bond now filed, in the amount of $41,000, is proper.

We have no power to award reparations and cannot fix rates retroactively. Consequently, our authority to require Dorchester to reduce rates or refund to Natural is limited to the period commencing on March 1, 1955, when the suspended 10¢ rate became effective, subject to refund under bond.

The Commission *finds:*

The bond heretofore filed by Dorchester in the amount of $41,000 is proper.

[1403]

The Commission *orders:*

The petition of Natural Gas Pipeline Company of America is dismissed.

By the Commission. Commissioner Connole concurring in the result.

Commissioner Draper dissenting.

J. H. GUTRIDE
Acting Secretary

Adopted: November 10, 1955
Issued: November 14, 1955

[1404]

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | Docket No. G-6505 |
| Dorchester Corporation | ) | |

CONNOLE, Commissioner, Concurring in Result

I concur in the result but not for the reasons pursued by the majority. I believe the applicable and effective rate on June 7, 1954 was 6.253c, and do so for these reasons.

We are here attempting to find the applicable and effective rate as of June 7, 1954. This is to be distinguished from the lawful or the just and reasonable rate at that time. The two may or may not be the same. It is also to be distinguished from the price being paid, which might be calculated erroneously or otherwise be inconsistent with the applicable and effective rate.

The significance of the effective and applicable rate derives from the language of Order 174-A issued August 6, 1954. Therein, in Rule 154.93, the phrase "Rate Schedule" as used

in 154.92 through 154.101 is defined to "mean the *basic contract and all supplements* or agreements amendatory thereof, *effective and applicable* on and after June 7, 1954 * * *." (Emphasis supplied.) Whatever the applicable and effective rate is, it will be found in the contract and the two supplements to it since these were the filings made in compliance with 174-A.

The contract of December 1, 1946, has this language in Article XIV (paraphrasing):

> "This contract is subject to * * * future lawful orders of all regulatory bodies * * * having jurisdiction over the parties; and should * * * either party, by * * * such law or regulation imposed,

[1405]

> be * * * required to do any act inconsistent with the provisions of this contract, the contract shall * * * be deemed modified to conform with the requirements of such law or regulation."

"Such law or regulation" refers back to the "future lawful orders" mentioned *supra*.

In other words, if a lawful order were promulgated requiring, for example, an increase in price, the parties have agreed in Article XIV that such a lawful order automatically becomes part of the contract.

Since the parties specified a lawful order, an unlawful order could have no effect. For example, an unlawful order requiring a change in price would not become part of the contract and hence part of the rate which was filed with this Commission. The only filing we had and accepted was the contract and the supplements. If the rate cannot be found in them, it was not filed and therefore was not the "effective and applicable" rate.

But between December 1, 1946, and the date Dorchester made its filing in compliance with 174-A, two regulations were passed by a body purportedly having jurisdiction over the parties. On May 17, 1951, and on July 29, 1952, orders were issued by the Oklahoma Corporation Commission which, if they had been lawful, would have, in the words of the agreement between the parties (Article XIV), "required (Dorchester and Natural) to do (an) act inconsistent with the provisions of this contract." That is, the parties would have been required to sell and buy gas at 7¢ and later at 9.8262¢ per mcf when the "provisions of this contract" required them to buy and sell at a price substantially less.

[1406]

By agreement of the parties, therefore, these minimum price orders, if they had been lawful, would have been deemed to have modified the contract to the extent necessary to make it conform thereto. It was for this reason the two orders were filed by Dorchester, along with the basic contract. Notice that, but for the provisions of the contract, the mere filing of Oklahoma Commission orders would not have been a rate filing. If they had any effect at all, it was by virtue of their incorporation into the contract. If they can't be found to be part of the contract, they are not a rate filing.

The rub comes, however, because the orders of the Oklahoma Commission were held unlawful insofar as interstate transactions were concerned. Since the contract dealt solely with interstate transactions, the orders were therefore unlawful insofar as this contract and these rates were concerned. If unlawful, they could not require the parties "to do any act inconsistent with the provisions of" the contract. It follows necessarily that the orders could not be deemed to modify the contract "to conform with the requirements" thereof. As

unmodified, the contract provided for a rate of 6.253¢ for the period here involved.

As stated at the outset, whatever the applicable and effective rate is, it will be found in the contract and the supplements. By the contract's own terms the supplements do not affect the contract. Therefore, the rate applicable and effective for purposes of this proceeding at this stage is 6.253¢.

These conclusions are inevitable regardless where the equities of the proceeding may lead. Whether protest had or had not been filed would have made no difference. Indeed, whether the filing as of November 1954

[1407]

had been accepted unconditionally or not would have made no difference. The parties are bound by their own contract which, by its very terms, provides that the supplements they filed are not effective between them.

Far from not accepting the initial filing, therefore, we are accepting precisely what Dorchester itself filed. If we accept some, we must accept all of the contract's terms, barring, of course, terms contrary to the public interest. Any attempt at this time to find applicable a rate different from the rate specified by the contract itself, would be to stray from the four corners of the instrument. This we may not do.

I agree with the majority that the bond need not be fixed at as high a figure as $742,000 however. It seems that to do so will place an unreasonable and probably impossible burden on Dorchester at this time. According to testimony of Dorchester, there would be insufficient revenue from a 6.253¢ rate to meet payments due under the terms of the mortgage instrument securing the loan of $35,000,000 from two life insurance companies. This and other evidence of somewhat thin finan-

cing make it clear that the ability of Dorchester to provide a surety bond in the amount of $742,000 as suggested by the recommended report and order, would depend on the corporate magnanimity of organizations not affiliated with Dorchester, except in a creditor relationship. The same sources which presumably can be counted on to produce a premium or otherwise to make possible an indemnification of Dorchester's customers will be as available in the event of a judgment for overcharges. I do not deem it a necessary protection, and indeed may render any protection impossible, to exact so high a toll.

WILLIAM R. CONNOLE

Filed: November 10, 1955

Issued: November 14, 1955

[1408]

In the Matter of

Dorchester Corporation } Docket No. G-6505

DRAPER, COMMISSIONER, dissenting:

I believe that the Decision of the Presiding Examiner in this proceeding should be affirmed.

The question involved depends simply upon what was the true rate in effect on June 7, 1954, for natural gas sold by the Dorchester Corporation to the Natural Gas Pipeline Company of America. There seems to be no dispute that Dorchester tendered on October 28, 1954, for filing in compliance with our Order No. 174-A its basic contract with Natural (providing a price of 6.253¢ per Mcf at 14.65 psia) and three supplements thereto, the last of which was Order No. 26096 of the Corporation Commission of Oklahoma purporting to fix a minimum price of 9.8262¢ per Mcf for gas produced in the Oklahoma field

concerned. Dorchester asserts that said price of 9.8262¢ per Mcf was the rate in effect on June 7, 1954.

Natural has contested the validity of the 9.8262¢ price purported to be set by the Oklahoma Commission, both before us and in the courts, and we recognized Natural's position in our order issued November 30, 1954, which accepted for filing Dorchester's tendered FPC Gas Rate Schedule No. 2 and Supplements 1 to 3 thereto, by stating specifically in that order that the filing was permitted

> " . . . subject to the express understanding and condition that such filing *is proper only if Order No. 26096 is valid* as to the sale by Dorchester to Natural covered by the filings, *but not otherwise.*" (Emphasis supplied.)

**[1409]**

The status of the rate charged by Dorchester to Natural on June 7, 1954, was therefore, as I see it, a contract price of 6.253¢ per Mcf, *or* a locally state-ordered price of 9.8262¢ per Mcf *if* the locally state-ordered price was established by a valid price order. There was no question of two rates being recognized by the order. The effective rate was one or the other of two definite rates.

The Supreme Court of the United States on April 11, 1955, reversing a decision of the Supreme Court of Oklahoma, held that the sale and transportation of natural gas by Dorchester to Natural

> " . . . cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission." (*Natural Gas Pipeline Co.* vs. *Panoma Corp. et al.*, etc., 349 U.S. 44.)

This action by the Supreme Court, in my understanding, says that the attempt of the Oklahoma Commission to fix a

minimum price for this transaction was void from the beginning, thus disposing of the condition in our order of November 30, 1954. Thus, Order No. 26096 of the Oklahoma Commission was not a valid exercise of rate fixing in interstate commerce, and therefore Supplement No. 2 was not a "proper" filing. It can only follow that what remained as properly filed —the contract rate of 6.253¢ per Mcf—was the sole effective rate.

CLAUDE L. DRAPER

Filed: November 10, 1955

Issued: November 14, 1955

[1410]

**DORCHESTER CORPORATION**

**103 First National Bank Building**

**Amarillo, Texas**

November 15, 1955

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington 25, D. C.

RE: Docket No. G-6505

Dear Mr. Fuquay:

In view of the Order of the Commission issued in Docket G-6505, November 14, 1955, finding that Dorchester Corporation's initial filed rate and its rate in effect on June 7, 1954, is 9.8262 cents, Dorchester Corporation hereby withdraws the 10 cent rate filed by it with the Commission on December 6,

1954, which filing was styled by the Commission "Supplement No. 4 to Dorchester Corporation's FPC Gas Rate Schedule No. 2."

To give effect to the Commission Order issued on April 7, 1955, wherein the 10 cent rate was made effective under bond, Dorchester Corporation will promptly issue appropriate credit memoranda to Natural Gas Pipeline Company of America for the difference between the payments made by Natural at the 10 cent rate and the rate of 9.8262 cents, plus interest at the rate of 6 per cent per annum, on such difference from the date of payment to the date of issuance of such memoranda.

Copies hereof have been served upon all parties to the proceeding in Docket G-6505.

Very truly yours,

DORCHESTER CORPORATION

JGE/f

By /s/ J. G. Eckel
J. G. Eckel, Vice President

[1411]

City of Washington
District of Columbia

Before me, the undersigned authority, this date personally appeared J. G. Eckel, who after being duly sworn, stated as follows:

I have caused a copy of the foregoing to be served upon each party to the proceeding in Docket G-6505, either by delivering a copy thereof in person to a representative of each such party,

or by mailing a copy thereof to such party at the address as indicated in the record of such proceeding.

/s/ J. G. ECKEL
J. G. Eckel

Subscribed and sworn to before me this 15th day of November, 1955, A. D.

/s/ MARY JO FREEHILL
Mary Jo Freehill
Notary Public

My Commission expires:
Apr. 14. 1960.

[1412]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of
Dorchester Corporation } Docket No. G-6505

FILED
NOV. 17, 1955
OFFICE OF THE SECRETARY
FEDERAL POWER COMMISSION

## PRESIDING EXAMINER'S REPORT OF REQUEST FOR WAIVER OF INTERMEDIATE DECISION PROCEDURE

TO THE COMMISSION:

Pursuant to the order of the Commission issued September 28, 1955, the above entitled "independent producer" rate proceeding was heard before the undersigned on October 11, 12

and 13, 1955. Dorchester presented certain oral and documentary evidence.

On October 13, 1955, after Dorchester completed its proof-in-chief, at the request of counsel a recess was taken until November 15, 1955, to permit counsel to prepare for cross-examination of Dorchester's witness and to go forward with the case.

The hearing was reconvened November 15, 1955, and the undersigned called attention to the orders issued by the Commission on October 24, 1955, in the matter of *Union Oil Company of California, et al.*, Docket No. G-4311, et al., and related cases, and to the order issued by the Commission on November 14, 1955 reversing the initial decision of the Presiding Examiner on the bond phase of this proceeding. The undersigned then called upon counsel for preliminary statements as to their proposed future course of action in the proceedings.

Dorchester then read into the record a copy of letter dated November 15, 1955, addressed to the Secretary of the Commission, stating, among other things, that in view of the finding contained in the Commission's order issued November 14, 1955, on the bond phase of Dorchester's case,[1] that Applicant's initial filed rate in effect June 7, 1954, "is 9.8262 cents, Dorchester Corporation hereby withdraws the 10 cent rate filed by it with the Commission on December 6, 1954*****."[2]

[1]This phase of the proceeding was heard before Examiner Zwerdling, but is also identified under Docket No. G-6505.

[2]Identified as "Supplement No. 4 to Dorchester Corporation's FPC Gas Rate Schedule No. 2."

[1413]

Thereupon, Dorchester, Commission Staff counsel and counsel for the interveners present were afforded an opportunity to go forward with the case. Dorchester indicated that it did not propose to introduce further evidence at that time, since its application to withdraw its rate filing, would, if approved by the Commission, fully dispose of the pending proceeding. Commission Staff counsel and counsel for the interveners indicated that they did not desire to cross-examine the witnesses who had theretofore testified on behalf of Dorchester, or to introduce any countervailing evidence.

Commission Staff counsel then requested "that the intermediate decision procedure be omitted and that we refer this matter back to the Commission on the record as we have it." All interveners present[3] concurred in such request, and Dorchester declined to take any position with respect thereto. The hearing was recessed subject to further order of the Commission.

Accordingly, such request is hereby reported to the Commission.

Respectfully submitted this 16th day of November, 1955.

/s/ RICHARD N. IVINS

Richard N. Ivins
Presiding Examiner

RNIeks

[3]Interveners, Oklahoma Corporation Commission and City of Chicago, were not represented.

[1415]

**Law Offices**
**ROSS & O'KEEFE**
**122 South Michigan Avenue**
**CHICAGO 3**

November 18, 1955

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
441 G Street, N.W.
Washington 25, D. C.

Re: Docket No. G-6505

Dear Sir:

Natural Gas Pipeline Company of America, an intervening party in the above entitled proceeding, has received a copy of a letter to you, dated November 15, 1955, from Dorchester Corporation. That letter purports to terminate such proceeding by withdrawing the 10¢ rate filed with the Commission on December 6, 1954 under the designation of "Supplement No. 4 to Dorchester Corporation's FPC Gas Rate Schedule No. 2".

After an initial period of suspension, the Commission, upon motion of Dorchester Corporation, made the 10¢ rate effective on March 1, 1955, subject to further order of the Commission in this proceeding. Extensive hearings have since been held and evidence adduced in this Docket; and all parties, including Dorchester Corporation, have signified their purpose to regard the record as complete.

In view of the provisions of Section 4 of the Natural Gas Act and the Rules and Regulations of the Commission issued

thereunder, it is clear that the proponent of a rate increase which has actually been made effective cannot withdraw such increase solely on its own volition. Accordingly, it is our opinion that the letter of November 15, 1955 is of no force and effect.

[1416]

We are authorized to make these representations on behalf of Natural as its counsel; and copies of this letter have been deposited in the mail this day addressed to all parties who have appeared in this proceeding.

Very truly yours,

CMcG/RS /s/ Ross & O'Keefe

[1417]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of )
Dorchester Corporation ) Docket No. G-6505

## PETITION FOR REHEARING OF ORDER REVERSING INITIAL DECISION OF PRESIDING EXAMINER

Natural Gas Pipeline Company of America (Natural), an intervening party in the above entitled proceeding and a person aggrieved by the Commission's order issued November 14, 1955, reversing the initial decision of the Presiding Examiner issued September 14, 1955, hereby makes application, pursuant to the provisions of Section 19(a) of the Natural Gas Act and

Section 1.34 of the Commission's Rules of Practice and Procedure, for rehearing of such order.

Natural asserts that the order of November 14, 1955 errs in finding that the $41,000 bond heretofore filed in this proceeding by Dorchester Corporation (Dorchester) is proper, as distinguished from the bond of $742,000 required by the decision of the Presiding Examiner; and in ordering dismissal of Natural's petition for reconsideration of the

[1418]

amount of the bond as originally fixed by the Commission in its order issued April 7, 1955.

In support of this petition for rehearing, Natural renews and reaffirms the objections to the $41,000 bond heretofore made by it in its pleadings and in the briefs filed by it with the Presiding Examiner; and it further represents to the Commission as follows:

I

The Commission has misapprehended its powers with respect to the treatment accorded by it in its conditional order of November 30, 1954 to Dorchester's rate filing under Order No. 174-A. On November 16, 1955—two days after the issuance by the Commission of the order for which rehearing is hereby sought—the United States Court of Appeals for the Tenth Circuit decided *Phillips Petroleum Company* v. *Federal Power Commission*. It unanimously held that it is the contract rate legally applicable on June 7, 1954 which, under the terms of Order No. 174-A, becomes the effectively filed rate; and that, where the rate filed as such applicable contract rate is contingently subject to reduction, the fact that the higher rate was actually being paid on June 7,

[1419]

1954 and was accepted for filing by the Commission, does not justify the Commission, upon the subsequent happening of the contingency, in refusing to recognize that the legally effective rate from and after June 7, 1954 is the lower price.

In this case the Court of Appeals has stated the principle that the Commission not only can, but *must*, in the proper administration of the scheme of effecting compliance promulgated by it in Order No. 174-A, recognize as the legally effective rate the contract rate legally applicable on June 7, 1954, even though the contract rate as originally filed has to be revised downward because of the happening of contingencies provided in the contract itself. This is precisely what three members of the Commission said, in the order of November 14, 1955, it could not do.

It is to be particularly noted that the case decided by the Tenth Circuit did not involve an award of reparations by the Commission. Neither does the instant case, although the three-man majority appears to have felt that the lack of statutory authority on the part of the Commission to award reparations was relevant to the decision it reached with respect to its inability to recognize the contract price of 6.253¢ per Mcf as the effectively filed rate.

[1420]

With respect to reparations, Natural does not now, nor does it propose in the future, to seek any award by the Commission of reparations for the period prior to March 1, 1955, despite the fact that Natural has, in respect of that same period, paid substantial amounts of money to Dorchester in excess of what it believes it was legally required to pay. Natural has independently invoked the aid of the courts to recover what it believes to be due it in this regard. What its rights may ulti-

mately prove to be in this litigation is not an issue in this proceeding and is not now, nor will it ever be, the concern of the Commission.

To the extent that the order of November 14, 1955 recognizes 9.8262¢ per Mcf, rather than 6.253¢ per Mcf, as the legally effective rate on file prior to March 1, 1955, it is in error.

II

What the three members of the Commission say, therefore, with respect to the reasons why they conclude that the $41,000 bond was adequate is without controlling significance; and the Commission's power to fix the bond in that amount must be rested solely on the discretion which

[1421]

undoubtedly is vested in it under the statute to fix the bond in any reasonable amount or, indeed, in a proper case to require no bond at all. In other words, the action of the Commission in this instance must be taken as resting solely upon considerations of the character outlined by Commissioner Connole in the last paragraph of his concurring opinion, that is to say, reasons directed to the Commission's discretion to fix the bond in whatever amount it deems equitable and proper under the circumstances, and without reference to the question of what was the prior legally effective rate on file.

Addressing itself to this ground of the decision, Natural asserts that, in view of what the record clearly shows with respect to Dorchester's financial weakness and instability, the limitation of the bond to $41,000 represents an abuse of the Commission's discretion which should be rectified.

WHEREFORE, Natural requests that the Commission enter an order:

(a) abrogating its order of November 14, 1955, and substituting therefor an order affirming the initial decision of

[1422]

the Presiding Examiner; or, alternatively,

(b) granting rehearing with respect to the order issued November 14, 1955, and setting the matter for oral argument before the Commission so that all parties may have an opportunity in open hearing to explore the issues involved.

Respectfully submitted,

NATURAL GAS PIPELINE COMPANY OF AMERICA

By /s/ CARL MCGOWAN
Attorney

[1423]

STATE OF ILLINOIS }
} SS
COUNTY OF COOK }

Carl McGowan, of lawful age, being first duly sworn, states that he is a member of the firm of Ross & O'Keefe, counsel to Natural Gas Pipeline Company of America; that he has read the foregoing petition and knows the contents thereof; that the facts set forth therein are true, as he verily believes; and that he has authority to file the same.

/s/ CARL MCGOWAN
Carl McGowan

Subscribed and sworn to before me this 5th day of December, A. D. 1955.

/s/ ROSE SOTOLA
Notary Public

[SEAL]

[1424]

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing petition upon all parties of record in these proceedings by mailing a copy thereof properly addressed and postage prepaid to the following:

Gene M. Woodfin, Esq.
Esperson Building
Houston 2, Texas

James J. Flanagan, Esq.
161 East 42nd Street
New York 17, New York

J. J. Danaher, Esq.
511 City Hall
Chicago, Illinois

Harry R. Begley, Esq.
Illinois Commerce Commission
160 N. La Salle Street
Chicago, Illinois

Floyd Green, Esq.
Oklahoma Corporation Commission
Oklahoma City, Oklahoma

Jacob Goldberg, Staff Counsel
Federal Power Commission
Washington, D. C.

Lambert McAllister, Asst. General Counsel
Federal Power Commission
Washington, D. C.

Dated at Chicago, Illinois, this 5th day of December, A. D. 1955.

/s/ CARL MCGOWAN
Carl McGowan

[1428]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of )
)
Dorchester Corporation ) Rate Filing

On November 14, 1955, the Commission found that the rate of Dorchester Corporation in effect on June 7, 1954, and consequently in effect on March 1, 1955, was 9.8262¢ per Mcf. Prior to such finding by the Commission, Dorchester had filed an application for a 10¢ rate which was made effective under motion on March 1, 1955. Proceedings have been had with respect to the 10¢ rate in Docket No. G-6505 and on November 15, 1955, Dorchester Corporation filed with the Secretary a letter withdrawing the 10¢ rate so as to leave in full force and effect the rate of 9.8262¢.

To remove any uncertainty with respect to the status of the rate proceeding in Docket No. G-6505 and conditioned upon the Commission's order of November 14, 1955, finding that Dorchester's effective

[1429]

rate was 9.8262¢, Dorchester hereby files as its rate to be effective as of March 1, 1955 (the date of suspension), the rate of 9.8262¢ per Mcf at a pressure base of 14.65 psia. This does not result in any increase in the present rate of Dorchester and the reasons for filing this rate are to settle and terminate all matters in Docket No. G-6505. Upon acceptance hereof by the Commission, Dorchester will promptly issue appropriate credit memorandum to Natural for the difference between the payments made by Natural at the 10¢ rate and the rate of

9.8262¢, plus interest at the rate of 6% per annum on such amount from the date of payment to the date of the issuance of such memorandum.

Respectfully submitted,

DORCHESTER CORPORATION

By_____
GENE M. WOODFIN, Attorney

[1430]

STATE OF TEXAS }
COUNTY OF HARRIS }

BEFORE ME, the undersigned authority, on this day personally appeared GENE M. WOODFIN, who after being by me first duly sworn, on his oath deposes and says:

That he has read the foregoing statement and is familiar with the contents thereof and that the facts and allegations contained therein are true and correct to the best of his knowledge and belief.

s/ GENE M. WOODFIN
Gene M. Woodfin

SUBSCRIBED AND SWORN TO before me this the 23rd day of December, 1955.

s/ ROSAMOND HILLEBRANDT
Rosamond Hillebrandt, Notary Public in and for Harris County, Texas

Seal

[1431]

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Rate Filing upon all parties of record in these proceedings by mailing a copy thereof, properly addressed and postage prepaid, to the following:

Carl McGowan
Ross & O'Keefe
122 South Michigan Avenue
Chicago 3, Illinois

J. J. Danaher
511 City Hall
Chicago, Illinois

Harry R. Begley
Illinois Commerce Commission
160 N. LaSalle Street
Chicago, Illinois

Floyd Green
Oklahoma Corporation Commission
Oklahoma City, Oklahoma

Jacob Goldberg, Staff Counsel
Federal Power Commission
Washington, D. C.

Lambert McAllister, Asst. General Counsel
Federal Power Commission
Washington, D. C.

Dated at Houston, Texas, this 23rd day of December, 1955.

s/ GENE M. WOODFIN

Gene M. Woodfin

[1438]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby and Frederick Stueck.

In the Matter of

Dorchester Corporation } Docket No. G-6505

## ORDER DENYING PETITION FOR REHEARING AND REQUEST FOR ORAL ARGUMENT

Adopted: December 29, 1955 Issued: January 5, 1956

On December 7, 1955, Natural Gas Pipeline Company of America, (Natural) filed an application for rehearing of the order of the Commission issued November 14, 1955, reversing the initial decision of the Presiding Examiner. Said order of the Commission dismissed Natural's petition to require Dorchester Corporation (Dorchester) to increase the amount of the surety bond furnished by Dorchester in connection with its proposed rate increase filing in this proceeding. Natural states that *Phillips Petroleum Company* v. *Federal Power Commission* decided by the Court of Appeals for the 10th Circuit on November 16, 1955, requires a result different from that reached in said order issued November 14, 1955. We do not so construe this decision of the 10th Circuit.

In the alternative, Natural requests oral argument on said application for rehearing.

The Commission *finds:*

No new facts have been presented in Natural's application for rehearing, and no new principles of law are stated therein

which either were not fully considered by the Commission before it entered its order issued November 14, 1955, or which now having been considered warrants rehearing, or modification of said order.

The Commission *orders:*

The petition for rehearing and the request for oral argument filed by Natural Gas Pipeline Company of America on December 7, 1955, in this proceeding, be and the same is hereby denied.

By the Commission. Commissioner Draper dissenting.

/s/ J. H. GUTRIDE

J. H. Gutride
Acting Secretary.

[1439]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, and Frederick Stueck.

In the Matter of
Dorchester Corporation } Docket No. G-6505

## ORDER DISMISSING PROCEEDINGS

Adopted: December 30, 1955 Issued: January 5, 1956

On December 6, 1954, Dorchester Corporation (Dorchester), an independent producer, tendered for filing Supplement No. 4 to its FPC Gas Rate Schedule No. 2, providing for an increase in its rate to ten cents per Mcf for natural gas sold to Natural

Gas Pipeline Company of America (Natural), produced in the Guymon-Hugoton Field, Texas County, Oklahoma.

By order issued December 29, 1954, the Commission suspended the proposed change in rates until March 1, 1955, and ordered a hearing therein on a date to be fixed by further order of the Commission. Thereafter Dorchester filed a motion, pursuant to Section 4 of the Natural Gas Act (Act) to place said new rate into effect under a bond; and by order issued April 7, 1955, the Commission permitted the proposed 10-cent rate to become effective as of March 1, 1955, subject to the filing by Dorchester of a corporate surety bond to assure refund of any portion of such increased rate which the Commission might ultimately find not to be justified.

Pursuant to Commission order issued September 28, 1955, hearings were held with respect to the lawfulness of the proposed increased rate contained in said Supplement No. 4. After the hearings, on December 23, 1955, we issued an order omitting the intermediate decision procedure, and pursuant thereto the Presiding Examiner certified to us the record in this proceeding.

Thereafter, on December 27, 1955, Dorchester filed as its rate to be effective as of March 1, 1955, the date of expiration of the suspension of Dorchester's proposed change in rates embodied in its aforesaid Supplement No. 4, the rate of 9.8262¢, which the Commission has heretofore found to be the effective rate on June 7, 1954, within the meaning of Order No. 174-A. Dorchester stated that upon acceptance of this rate by the Commission, Dorchester will promptly issue an appropriate credit memorandum to Natural for the difference between the payments made by Natural at the 10¢ rate and 9.8262¢ rate, plus interest at 6% per annum on such amount from the date of payment to the date of the issuance of such memorandum.

The stated purpose of this filing was "to remove any uncertainty with respect to the status of the rate proceeding" in this docket, and to "settle and terminate all matters" herein.

[1440]

Under the authority contained in Sections 4, 16 and complementary provisions of the Act, the termination of this proceeding is proper since it permits the orderly and expeditious disposition of a matter the continuation of which would serve no further purpose, in a manner consonant with the proper and efficient exercise of our functions under the Act and with the interests of the parties and the public.

In view of the foregoing, Dorchester's letter filed with the Commission on November 15, 1955, should be rejected. Also Dorchester should be required to refund to Natural the increase based upon the difference between 10 cents and 9.8262 cents per Mcf plus interest at the rate of 6% per annum on such difference from dates of payments by Natural to the date of refund.

The Commission *orders:*

(A) The increase in rates and charges proposed by Dorchester Corporation by Supplement No. 4 to its FPC Gas Rate Schedule No. 2 filed on December 6, 1954, be and the same is hereby dismissed, and said filing shall have no force or effect.

(B) Effective as of the date of issuance hereof the permission heretofore granted in the Commission's order issued April 7, 1955, that Dorchester Corporation provisionally collect and receive, subject to bond, the increased rate provided for by Supplement No. 4 to its FPC Gas Rate Schedule No. 2, shall cease and terminate.

(C) Effective as of the date of issuance hereof, the rates and charges provided in Supplement No. 3 to Dorchester

Corporation FPC Gas Rate Schedule No. 2, as effective prior to the filing of Supplement No. 4, is hereby reinstated.

(D) Within 30 days from the date of issuance of this order Dorchester Corporation shall make refund to Natural Gas Pipeline Company of America of the increase based upon the difference between 10¢ and 9.8262¢ per Mcf plus interest at the rate of 6% per annum on such difference from the dates of payment by Natural to the date of refund, and shall report to the Commission in writing and under oath, in quadruplicate, within 15 days after the making of such refund, the amount of refund, the dates covered by the refund, the billing units and all other pertinent data. If agreeable to Natural, such refund may be accomplished by the issuance by Dorchester of appropriate credit memorandum to Natural, subject to the requirements of this paragraph.

(E) Dorchester's letter dated November 15, 1955 is hereby rejected.

(F) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act; nor shall it be construed as constituting approval by this Commission of any service agreement, rate, charge, classification, or any rule, regulation or prac-

[1441]

tice affecting such service agreement or rate; nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service agreement or rate.

By the Commission. Commissioner Draper dissenting.

J. H. GUTRIDE

J. H. Gutride
Acting Secretary

[1442]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of
Dorchester Corporation } Docket No. G-6505

## PETITION FOR REHEARING OF ORDER DISMISSING PROCEEDINGS

Natural Gas Pipeline Company of America (Natural), an intervening party in the above entitled proceedings and a person aggrieved by the Commission's order issued January 5, 1956 dismissing this proceeding, hereby makes application, pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, for rehearing of such order in the particulars and to the extent hereinafter indicated.

Natural asserts that the order of January 5, 1956 errs in

(1) reinstating, as provided in paragraph (C) of such order, the rate of 9.8262¢ per Mcf provided in Supplement No. 3 to Dorchester Corporation FPC Gas Rate Schedule No. 2; and

(2) directing, as provided in paragraph (D) of such order, that Dorchester Corporation (Dorchester)

[1443]

make refund to Natural upon the basis of the difference between 10¢ (Supplement No. 4) and 9.8262¢ per Mcf for the period during which the former was in effect.

In support of this petition for rehearing, Natural represents to the Commission as follows:

I

Paragraphs (A) and (B) of the order of January 5, 1956 provide in substance that the increase in rates and charges pro-

posed by Supplement No. 4 to Dorchester's FPC Gas Rate Schedule No. 2 is dismissed; and that the permission heretofore granted Dorchester provisionally to collect such increased rate from and after March 1, 1955, under bond and subject to further order of the Commission, cease and terminate. The next ordering provision is as follows:

> "(C) Effective as of the date of issuance hereof, the rates and charges provided in Supplement No. 3 to Dorchester Corporation FPC Gas Rate Schedule No. 2, as effective prior to the filing of Supplement No. 4, is hereby reinstated."

The assumption in this paragraph that the rate of 9.8262¢ per Mcf was "effective prior to the filing of Supplement No. 4" presumably was conceived of by the Commission as following from its earlier statement in the recitals to the effect

**[1444]**

that 9.8262¢ is the rate "which the Commission has heretofore found to be the effective rate on June 7, 1954, within the meaning of Order No. 174-A".

Paragraph (C) is defective for the following reasons:

1. The effectively filed rate prior to March 1, 1955 was not 9.8262¢ per Mcf as paragraph (C) assumes, but, rather, 6.253¢ per Mcf, which is the rate presently on file with the Commission in the form of Dorchester Corporation FPC Gas Rate Schedule No. 2, including Supplements Nos. 1 and 2 thereto. 6.253¢ per Mcf constitutes the contract rate in effect on June 7, 1954 within the meaning of Order No. 174-A.

Supplement No. 3 consists solely of Order No. 26096 of the Oklahoma Corporation Commission, fixing the minimum price of gas in the Guymon-Hugoton field at 9.8262¢ per Mcf, but this minimum price order was held invalid by the United States Supreme Court on April 11, 1955. It, therefore, was null and

void *ab initio* and at no time constituted a "lawful" order of a regulatory body within the meaning of Article Fourteenth of the contract between Natural and Dorchester. Its conditional acceptance for filing by the Commission in its order of November 30, 1954, contingent upon the eventual action

[1445]

of the Supreme Court with respect to it, does not and can not disable the Commission from now striking Supplement No. 3 from its files and recognizing 6.253c per Mcf as the effectively filed rate under Order No. 174-A.

In this connection Natural renews and reaffirms, and incorporates by reference herein, the objections and representations on this point which it has heretofore made in its pleadings in this proceeding, the briefs filed by it with the Presiding Examiner, and its petition for rehearing of order reversing initial decision of Presiding Examiner.

2. The order of January 5, 1956 not only dismisses the 10c rate, but it also adversely affects the substantive rights of Natural by specifying the rate which is to supersede the rate dismissed and upon the basis of which refunds are to be made. This dismissal comes at a time when no formal motion to dismiss was pending before the Commission; when a record had been compiled and closed after extensive hearings in which evidence was adduced; and when the Commission, by its order of December 23, 1955, had directed that the intermediate decision procedure be omitted and the record certified to it. There is no evidence in that record which would support or justify any rate other than 6.253c per Mcf as

[1446]

the rate to be fixed by the Commission in replacement of the 10c rate.

3. Since the closing of the record in this proceeding and its certification to the Commission as directed in its order of December 23, 1955, Natural has been afforded no oppor-

tunity to file briefs or otherwise to be heard prior to the issuance of the order of January 5, 1956. Under such circumstances, the Commission's inclusion of paragraph (C) in its order is a denial of Natural's right to a prior hearing in respect of a decision which affects it adversely in a matter of substance, in violation of Section 4 of the Natural Gas Act, Sections 5, 7 and 8 of the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

4. Paragraph (C) rests upon an assumption by the Commission that it has already found that the effectively filed rate prior to March 1, 1955 was 9.8262¢. In a dispute which arose earlier in this proceeding as to the amount of the bond which should be required of Dorchester in connection with its 10¢ rate, the Commission, in its order of November 14, 1955, reaffirmed the propriety of the amount of the bond as originally fixed by it.

[1447]

But, as pointed out in Natural's petition for rehearing of that order, the bond decision stood or fell upon the question of whether the Commission's conceded discretion to vary the amount of the bond or to require no bond at all was properly exercised in view of the peculiar circumstances relating to Dorchester's financial condition. What three members of the Commission said with respect to the legally effective rate prior to March 1, 1955 was not only wrong, but superfluous as well.

In any event, the interlocutory issue as to the bond is a far cry from the final determination of the rate to replace the 10¢ rate; and what may have been said on the one does not automatically govern the other. Moreover, the bond question arose only as an incident to the provisional effectiveness of the 10¢ rate filing. The Commission has now dismissed that proceeding and has directed that the filing of the 10¢ rate shall be of no force and effect. This action necessarily has the effect of wiping out the proceedings with respect to the bond; and there is, thus, no prior ruling by the Commis-

sion to which it must now adhere. It is, accordingly, free to consider, without reference to what it has said heretofore, the issue of what the effectively filed rate was prior to March 1, 1955 which is now to

[1448]

be reinstated; and it is correspondingly erroneous, both substantively and in terms of procedural due process, for the Commission to include paragraph (C) on any assumption that the issue has been foreclosed or resolved by an earlier ruling by it and without according Natural an opportunity to be heard thereon.

II

Paragraph (D) of the order of January 5, 1956 is defective in that it measures the refund obligation of Dorchester by reference to 9.8262¢ per Mcf rather than 6.253¢. If, upon dismissal of the 10¢ rate, the previously effective rate is to be reinstated, as paragraph (C) purports to do, and if that previously effective rate is 6.253¢ per Mcf rather than 9.8262¢, it is clear that Dorchester should be directed in paragraph (D) to compute its refund, with respect to the period from March 1, 1955 forward, upon the basis of the difference between 10¢ and 6.253¢.

In common with paragraph (C), and for the reasons set forth above in sub-paragraph 3, the inclusion of paragraph (D) violates Natural's right to be heard.

WHEREFORE, Natural requests that the Commission enter an order:

[1449]

(a) modifying its order of January 5, 1956 by (i) striking Supplement No. 3 from the files of the Commission, and (ii) revising paragraphs (C) and (D) in such manner as to reinstate 6.253¢ per Mcf as the legally effective rate

prior to the filing of Supplement No. 4, and directing that the refund to be made by Dorchester be based upon the difference between 10¢ and 6.253¢; or, alternatively,

(b) granting a rehearing with respect to paragraphs (C) and (D) of the order of January 5, 1956 and setting the issues raised by those paragraphs for hearing and argument.

Respectfully submitted,

NATURAL GAS PIPELINE COMPANY OF AMERICA

By /s/ CARL McGOWAN
Attorney

[1450]

STATE OF ILLINOIS )
) ss
COUNTY OF COOK )

Carl McGowan, of lawful age, being first duly sworn, states that he is a member of the firm of Ross & O'Keefe, counsel to Natural Gas Pipeline Company of America; that he has read the foregoing petition and knows the contents thereof; that the facts set forth therein are true, as he verily believes; and that he has authority to file the same.

/s/ CARL McGOWAN
Carl McGowan

Subscribed and sworn to
before me this 19th day of
January, A. D. 1956.

/s/ ROSE SOTOLA
Notary Public

[1451]

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing petition upon all parties of record in these proceedings by mailing a copy thereof properly addressed and postage prepaid to the following:

Gene M. Woodfin, Esq.
Esperson Building
Houston 2, Texas

James J. Flanagan, Esq.
161 East 42nd Street
New York 17, New York

J. J. Danaher, Esq.
511 City Hall
Chicago, Illinois

Harry R. Begley, Esq.
Illinois Commerce Commission
160 N. La Salle Street
Chicago, Illinois

Floyd Green, Esq.
Oklahoma Corporation Commission
Oklahoma City, Oklahoma

Jacob Goldberg, Staff Counsel
Federal Power Commission
Washington, D. C.

Lambert McAllister, Asst. General Counsel
Federal Power Commission
Washington, D. C.

Dated at Chicago, Illinois, this 19th day of January, A. D. 1956.

/s/ CARL MCGOWAN

Carl McGowan

[1452]

**DORCHESTER CORPORATION**
**Panoma Petroleum Products**
**602 Fidelity Union Life Building**
**Dallas 1, Texas**

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
441 G Street N W
Washington 25, D. C.

January 26, 1956

RE: Docket No. G-6505
FPC Order Dated January 5, 1956

Dear Mr. Fuquay:

In accordance with the requirements of paragraph D of the above referenced order Dorchester Corporation wishes to report the issuance to Natural Gas Pipeline Company of a credit memorandum dated January 25, 1956 reflecting the difference between deliveries at 10 cents and 9.8262 cents per MCF and interest on such difference applicable to gas sales occurring during the period March through November of 1955. The billing unit is MCF on 14.65 p.s.i.a. pressure base. Copies of the credit memorandum are enclosed for your file.

Very truly yours,

PRESTON A. PEAK

Preston A. Peak, Controller

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for Dallas County, Texas, this 26th day of January, 1956.

EVELYN PHILLIPS

Notary Public in and for
Dallas County, Texas

**NATURAL GAS PIPELINE COMPANY OF AMERICA**

20 N. WACKER DRIVE
CHICAGO, ILLINOIS

**In Account With**

**DORCHESTER CORPORATION**

103 FIRST NATIONAL BANK BLDG.
AMARILLO, TEXAS

Terms: Invoice Number Date January 25, 1956

We Credit Your Account For: Difference between net amount paid for gas and charge @ $0.098262 per MCF plus interest @ 6% per annum in accordance with Federal Power Commission Order issued January 5, 1956, Docket No. G. 6505.

| Month | Previously Billed | MCF @$0.098262 | Difference | Interest | Total |
|---|---|---|---|---|---|
| March 1955 | $ 160,920.10 | $ 158,123.31 | $ 2,796.79 | $125.86 | $ 2,922.65 |
| April | 145,737.10 | 143,204.19 | 2,532.91 | 101.32 | 2,634.23 |
| May | 179,348.60 | 176,231.52 | 3,117.08 | 109.10 | 3,226.18 |
| June | 151,698.50 | 149,061.98 | 2,636.52 | 79.10 | 2,715.62 |
| July | 144,124.00 | 144,025.17 | 98.83 | 2.47 | 101.30 |
| August | 146,379.07 | 144,394.93 | 1,984.14 | 39.68 | 2,023.82 |
| September | 141,963.50 | 139,936.98 | 2,026.52 | 30.40 | 2,056.92 |
| October | 179,130.31 | 176,601.58 | 2,528.73 | 25.29 | 2,554.02 |
| November | 221,875.39 | 218,721.29 | 3,154.10 | 15.77 | 3,169.87 |
| | $1,471,176.57 | $1,450,300.95 | $20,875.62 | $528.99 | $21,404.61 |

[1454]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matter of
Dorchester Corporation } Docket No. G-6505

## ORDER DENYING APPLICATION FOR REHEARING OF ORDER

Adopted: February 8, 1956 Issued: February 9, 1956

On January 20, 1956, Natural Gas Pipeline Company of America (Natural), filed application for rehearing, reconsideration and modification of the Commission's order dismissing proceedings issued on January 5, 1956.

Upon further consideration of said order and the aforesaid application for rehearing. the Commission *finds:*

Said application for rehearing, reconsideration and modification of the order which was issued on January 5, 1956, sets forth no new facts and no principles of law which either were not fully considered by the Commission when it adopted said order or which having now been considered warrant any change in or modification of such order.

The Commission *orders:*

The application filed January 20, 1956, by Natural Gas Pipeline Company of America for rehearing, reconsideration and modification of the order issued January 5, 1956 be and the same is hereby denied.

By the Commission. Commissioner Connole dissenting

/s/ LEON M. FUQUAY

LEON M. FUQUAY,
Secretary.

[1455]

FEDERAL POWER COMMISSION

Washington 25

Feb. 3, 1956

Vinson, Elkins, Weems & Searls
Esperson Building
Houston 2, Texas

Gentlemen:

This is to advise you of the acceptance for filing of your "Rate Filing" received by the Commission on December 27, 1955 with your letter of transmittal dated December 23, 1955. For purposes of identification the filing has been assigned the following designations:

Dorchester Corporation
Supplement No. 6 to
FPC Gas Rate Schedule No. 2

The Commission considered your proposal to make this supplemental rate schedule effective as of March 1, 1955 but took no action to grant the necessary waiver of statutory notice to establish such effective date. Consequently such supplement became effective January 27, 1956 upon expiration of 30 days statutory notice.

The foregoing acceptance shall not be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the "Rate Filing"; nor shall it be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Commissioners Draper and Connole stated that in view of the action taken by the Commission in the order adopted December 30, 1955 and issued January 5, 1956, in the adoption of which Commissioner Connole did not participate and Commissioner Draper dissented, and more specifically paragraph (C) of the order, Supplement No. 3 to Dorchester Corporation FPC Gas Rate Schedule No. 2 has been reinstated; that the instant rate filing is therefore superfluous and should be rejected.

Very truly yours,

LEON M. FUQUAY
Secretary

cc: Natural Gas Pipeline Company of America
20 North Wacker Drive
Chicago, Illinois

[1457]

**TELEGRAM**

Chicago, Illinois
February 7, 1956

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
441 G Street, N.W.
Washington 25, D.C.

In the matter of Dorchester Corporation Docket Number G6505. Natural Gas Pipeline Company of America learns for the first time from the copy just received of your letter of February 3 to Vinson Elkins Weems & Searls that the commission has elected to treat the document filed by Dorchester Corporation with the commission on December 27, 1955 as a rate increase under section 4 of the Natural Gas Act to be effective prospectively rather than on March 1, 1955 as the document itself provides. Natural hereby protests the action

of the commission in so treating this document and in permitting it to become effective January 27, 1956. The stated purpose for which the document was originally submitted was recognized by the commission as achieved by its order issued January 5, 1956 which purported to reinstate effective as of that date the 9.8262c rate which the commission, erroneously in our view, has regarded as the effectively filed rate prior to March 1, 1955. To treat the same numerical figure as a rate increase effective January 27, 1956 is superfluous. It can only be treated as a filed rate increase under Section 4 upon the assumption that the effectively filed rate prior to its submission

[1458]

is 6.253c per Mcf, in which event the filing should have been rejected as not in conformity with the statute and the commission's established rules. Further, for the commission to treat this filing as an increase which it might make effective prospectively contrary to the recitals in the document itself and without giving notice of such intention to Natural is a denial to Natural of due process of law including specifically Natural's right to notice and to be heard upon the propriety of a filed rate increase prior to its being made effective without suspension. Natural requests that the action of the commission reported in its letter of February 3 be rescinded and that the document designated by the commission as supplement Number 6 be stricken from the commission's files and rejected.

NATURAL GAS PIPELINE
COMPANY OF AMERICA

By CARL McGOWAN
Attorney

cc: GENE WOODFIN, Esq.
Esperson Building
Houston 2, Texas

[1461]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matter of )
)
Dorchester Corporation )

## ORDER DENYING APPLICATION FOR REHEARING

Adopted: February 15, 1956 Issued: February 24, 1956

Natural Gas Pipeline Company of America (Natural), on February 8, 1956, filed a protest which is herein construed to be an application for rehearing of the notice of the Secretary dated February 3, 1956. The aforesaid notice made effective as of January 27, 1956, Supplement No. 6 to Dorchester Corporation's FPC Gas Rate Schedule No. 2, tendered for filing on December 27, 1955. The supplement covers the sale of natural gas by Dorchester Corporation to Natural, subject to the jurisdiction of the Commission.

Natural asserted that the filing is "not in conformity with the statute and the Commission's established rules," and requested the filing be stricken from the Commission's files and rejected. In substance, the application for rehearing reiterates representations filed with the Commission by Natural on January 3, 1956, concerning the December 27, 1955 tendered filing of Dorchester Corporation.

The Commission *finds:*

The assignments of error and grounds for rehearing set forth no new facts and no principles of law which either were not fully considered by the Commission when it permitted the aforesaid Supplement No. 6 to Dorchester Corporation's FPC Gas Rate Schedule No. 2 to become effective, or which having now been considered, warrant any change in, or modification of, the Commission's action of February 3, 1956.

The Commission *orders:*

The application for rehearing filed by Natural Gas Pipeline Company of America on February 8, 1956, is hereby denied. By the Commission. Commissioners Draper and Connole dissenting.

LEON M. FUQUAY

Leon M. Fuquay,
Secretary.

[1462]

Law Offices

**ROSS & O'KEEFE**
122 South Michigan Avenue
Chicago 3

December 30, 1955

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
441 G Street, N.W.
Washington 25, D. C.

Re: *Docket No. G-6505*

Dear Sir:

As counsel to Natural Gas Pipeline Company of America (Natural), an intervening party in the above entitled proceeding, we are authorized to make these representations on its

behalf with respect to the so-called rate filing, dated December 23, 1955, which has been submitted to you by Dorchester Corporation (Dorchester) and which purports to file a rate of 9.8262¢ per Mcf as the rate to be effective from and after March 1, 1955.

Although the document so submitted is designated as a "rate filing" and bears no docket number, it is obviously intended to be a component of this proceeding as a supplement to Dorchester's letter of withdrawal, dated November 15, 1955, of the presently effective 10¢ rate. In any event, it does not, either in substance or in form, comply with the requirements of the Natural Gas Act and of the Commission with respect to rate filings. Neither is it possible, under that statute or the regulations of the Commission issued pursuant thereto, for a natural gas company to file a rate which is to be effective as of an earlier date.

Dorchester's so-called rate filing assumes in terms that the above entitled proceeding has been terminated simply by force of Dorchester's letter of withdrawal of the 10¢ rate, and that such withdrawal operates to leave in full force and effect the rate of 9.8262¢ as the prior effective rate. Natural denies these assumptions in every particular, including the assertion that 9.8262¢ was the effectively filed rate prior to March 1, 1955. Reliance is placed by Dorchester in this latter connection upon the Commission's order of November 14,

[1463]

1955, relating to the amount of Dorchester's bond. However, Natural has filed a petition for rehearing of said order, which is now pending before the Commission.

In our letter to you of November 18, 1955, we pointed out that Dorchester's attempted abandonment of the 10¢ rate was

of no force and effect for the reason that the 10¢ rate became effective by order of the Commission on March 1, 1955, subject to its further order in this proceeding; that extensive hearings have been held and evidence adduced; and that all parties, including Dorchester, have signified their purpose to regard the record as closed. That record is now before the Commission for decision, as witness its order of December 23, 1955, directing that the intermediate decision procedure be omitted and that the record be certified to it. Under these circumstances, the presently effective rate of 10¢ can be superseded only by an order of the Commission in this proceeding specifying the rate which is to take its place; and it is beyond the power of Dorchester (or of the Commission by acceptance thereof) to supersede it as of March 1, 1955 by an attempted rate filing.

Copies of this letter have been deposited in the mail this day addressed to all parties who have appeared in this proceeding.

Very truly yours,

CMcG/RS /s/ Ross & O'Keefe

Office - Supreme Court, U.S.
FILED
MAY 14 1958
JOHN T. FEY, Clerk

No. 1003

IN THE

# United States Court of Appeals

FOR THE THIRD CIRCUIT

No. 11,862

NATURAL GAS PIPELINE COMPANY OF AMERICA,
*Petitioner,*

v.

FEDERAL POWER COMMISSION,
*Respondent,*

DORCHESTER CORPORATION,
*Intervenor.*

## PETITION FOR REHEARING OF DORCHESTER CORPORATION, INTERVENOR

GENE M. WOODFIN
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DUNNINGTON, BARTHOLOW & MILLER
New York, New York
*Of Counsel for Petitioner*

RECEIVED & FILED
MAR 1958

SORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

IDA U. CRESKOFF

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In The

# United States Court of Appeals

For the Third Circuit

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No. 11,862

---

Natural Gas Pipeline Company of America,

*Petitioner.*

v.

Federal Power Commission,

*Respondent.*

Dorchester Corporation,

*Intervenor.*

---

## PETITION FOR REHEARING OF DORCHESTER CORPORATION, INTERVENOR

---

Comes now Dorchester Corporation and files this Petition for Rehearing.

Dorchester files this petition in good faith because of errors which it believes that the Court committed in its opinion of February 26, 1958, and this petition is not filed for delay.

In its original opinion, the Court speaks of "facile argument" (slip opinion, p. 9) and that "The shortcoming here has been that the Commission has made no attempt to find what was in the public interest (Slip opinion, p. 7). It is

distressing to Petitioner that its good faith arguments and the action taken by the Commission in the matter should assume such characterization in the eyes of the Court. Petitioner is seeking no more than it requires to exist and what legally constituted authority has found to be the minimum price necessary to prevent actual and physical waste of this irreplaceable commodity. The Commission has acted in the light of its overall knowledge of the industry and the problem presented.

Dorchester is but one of many sellers selling gas from the huge Hugoton Field located in Kansas and Oklahoma. The Commission having had thrust upon it regulation of the independent producers by *Phillips*[1] has encountered administrative problems beyond the capacity of that or any other agency to solve. The treatment of the state minimum price laws which were admittedly passed in the aid of conservation and to prevent waste[2] were just one of the many vexing problems presented to the Commission. The Commission resolved that until further study and determination that it would attempt to preserve the status quo of all prices being paid on June 7, 1954. It did this by preserving the price structure which it found in effect in the industry at that date. It did this not only with respect to Dorchester, but with respect to all sellers under similar circumstances and conditions. The determination of what is in the public interest is a matter peculiarly for the Federal Power Commission and a question which it must solve by its knowledge of the surrounding facts and circumstances in the industry which it regulates.

Not only will this case vitally affect Dorchester and its ability to render service to Natural, but it will also likewise

[1] *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954).
[2] *Cities Service Gas Company v. Peerless Oil and Gas Company*, 340 U.S. 179 (1950); *Phillips Petroleum Company v. Oklahoma*, 340 U.S. 190 (1950).

affect all other sellers whose prices were being paid pursuant to the Oklahoma and Kansas minimum price laws. There has been no determination that those laws were bad or were not required in the broad public interest. Quite to the contrary. It has only been decided that the Commission has paramount jurisdiction.

The Court's decision rests almost entirely upon the application of *Mobile*. The Court's attention is respectfully directed to the fact that all of the orders that were entered by the Commission were entered *prior* to the Supreme Court's decision in *Mobile*.

It is respectfully suggested that the Court is in error in saying that Natural ever raised the question in Docket G-6505 that the Commission was without power to increase the contract rate. Indeed, that was the only question that Natural did not raise. It did not question Dorchester's right in such rate case to increase the contract rate. It only questioned the amount of the bond that should be filed.

## I.

**Accepting The Court's Statement That "The Dispositive Question Here Is, What Was The Lawful Contract Rate On June 7, 1954, For Gas Sold By Intervenor, Dorchester Corporation To Petitioner?," The Case Is Wrongly Decided.**

The Court, in its origiral opinion, stated:

> " . . . When the United States Supreme Court found Oklahoma's action to have been unlawful, and set the state commission order aside, there was no longer even the semblance of a valid law, or lawful order which could modify the contract rate. The contract rate, therefore, under the mandate of the Supreme

> Court must be held to have been the rate effective on June 7, 1954."

This Court evidently assumes that the Oklahoma minimum price order was void *ab initio*. The Supreme Court, however, did not say *when* the Oklahoma minimum price order became invalid. This point was not decided by the Supreme Court in *Natural Gas Pipeline Company of America* v. *Panoma Corporation*.[3] In *Panoma*, the Court made no determination as to whether such state regulation was valid or invalid *prior to the implemention of regulation of the independent producers by the Federal Power Commission* which did not occur until the promulgation by the Commission of Order No. 174 on July 16, 1954. The Natural Gas Act was enacted in 1938. Section 4(c) of the Act provides:

> "*Under such rules and regulations as the Commission may prescribe*, every natural-gas company shall file with the Commission within such time and *in such form as the Commission may designate*, * * * schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission. * * * "

No rules or regulations were prescribed for the filing of rate schedules by independent producers until July 16, 1954. In 1950, some twelve years after the passage of the Natural Gas Act, but prior to the assertion of jurisdiction by the Commission over independent producers' rates, the Supreme Court had, of course, upheld as valid the first Oklahoma state minimum price order in *Cities Service* and *Phillips*, *supra*, footnote 1.

Inherent in the assumption made by this Court that the second Oklahoma minimum price order was void *ab initio*

[3] Cited by this Court as *Natural Gas Pipeline Company of America* v. *Corporation Commission of the State of Oklahoma*, 349 U.S. 44 (1955), but for convenience hereinafter referred to as Panoma.

is the holding that the enactment of the Natural Gas Act in 1938 precluded state action in this field, whether the Commission had acted or not. Concededly, after the Commission issued its "Rules and Regulations" on July 16, 1954, pursuant to Section 4(a) of the Act, it had exclusive and paramount jurisdiction in the field and the state order was no longer effective.

However, the state order was effective on June 7, 1954, the Commission not having undertaken regulation of the independent producers until July 16, 1954. The rate being paid on June 7, 1954, was the proper rate to be filed in accordance with §154.93 of the Commission's Regulations.

This point was not urged before this Court in the original brief or in oral argument.

### a. The Natural Gas Act Did Not Automatically Preclude State Regulation.

The Supreme Court has firmly established that merely because Congress has vested regulatory power in a federal agency that does not of itself displace state regulation if no federal standards are set. *H. P. Welch Co* v. *New Hampshire*, 306 U.S. 79 (1939); *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761 (1945); *Terminal R. Asso.* v. *Brotherhood of Trainmen*, 318 U.S. 1 (1943); *Northwestern B. T. Co.* v. *Nebraska State R. Co.*, 297 U.S. 471 (1936); *Missouri P. R. Co.* v. *Larabee Flour Mills Co.*, 211 U.S. 612 (1909). See also Justice Frankfurter's dissent in *Hill* v. *Florida*, 325 U.S. 538, 553 (1945). This fundamental principle concerning the demarcation between state and federal power was first recognized in *Missouri P. R. Co.* v. *Larabee Flour Mills Co.*, *supra*, where it was contented that the power Congress had vested in the Interstate Commerce Commission precluded state action in regard to the transfer of cars between railroads. In rejecting this claim, the Court stated:

"On the other hand, it said that Congress has already acted, — has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has entrusted power to that Commission does not, in the absence of action by it, change the rule which existed prior to the creation of the Commission. Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the State in these incidental matters. *A mere delegation by Congress to the Commission of a like power has no greater effect, and does not of itself disturb the authority of the State.* It is not contended that the Commission has taken any action in respect to the particular matter involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts. Until then the authority of the State in merely incidental matters remains undisturbed. *In other words, the mere grant by Congress to the Commission of certain national powers in respect to Interstate Commerce does not of itself, and in the absence of action by the Commission, interfere with the authority of the State to make those regulations conducive to the welfare and convenience of its citizens.* Running through the entire argument of counsel for the Missouri-Pacific is the thought that the control of Congress over Interstate Commerce, and a delegation of that control to a Commission, necessarily withdraws from the State all power in respect to regulations of a local character. This proposition can not be sustained." (Emphasis supplied.)

This doctrine was continued in *Northwestern B. T. Co.* v. *Nebraska State R. Com., supra*, where the Court upheld an order of the Nebraska State Railroad Commission requiring the telephone company to use a designated depreciation rate for all property in Nebraska. The basic question involved was whether the jurisdiction con-

ferred by Congress upon the Interstate Commerce Commission over depreciation rates of telephone companies, despite the failure of the Commission to exercise that jurisdiction, operated to curtail state authority over the depreciation rates for 1934. The Court reviewed the statutory history and noted that the Interstate Commerce Commission never undertook to implement its jurisdiction over rates of depreciation until a 1920 amendment directed the Commission to prescribe such rates "as soon as practicable." Pursuant to this legislative mandate the Commission took steps to establish rates of depreciation but none had been fixed at the time this case was decided and jurisdiction over the matter had been transferred to the Federal Communications Commission. In holding the state regulation valid, the Court stated:

> "Both the language of the statute already quoted, and the nature of its subject matter indicate that it contemplated no restrictions of state control over depreciation rates until the Interstate Commerce Commission had prescribed its own rates. State commissions were not deprived of power to fix rates for intrastate telephone service, in determining which rates of depreciation chargeable to operating expenses play an important part. See *Lindheimer* v. *Illinois Bell Teleph. Co.*, 292 U.S. 151, 78 L. Ed. 1182, 54 S. Ct. 658. The statute did not envisage an immediate adoption of the depreciation rates by the Interstate Commerce Commission. A long period might elapse, as the event has shown, before the Commission would be prepared to act. *It cannot be supposed that Congress intended by the amendment to Section 20(5) to preclude all regulation, State and National, of depreciation rates for telephone companies, for an indefinite time, until the Interstate Commerce Commission could act administratively to prescribe rates.*
>
> * * * * *

> "The Commission has thus prescribed no depreciation rates as required by Section 20(5). No exertion of Federal authority, through the Interstate Commerce Act, Section 20(5), (6), (7), the orders of the Commission or otherwise, forbids the making of entries in Appellant's accounts or the doing of anything that is by the State Commission's order directed to be done. *Pending action by the Communications Commission establishing depreciation rates for telephone companies, State control over such rates remains unimpaired.* We are not called upon now to consider the effect upon State power of such rates when adopted, or in view of the State of the record, to consider other objections to the order of the State Commission fixing for Appellant a composite depreciation rate of 3½%." (Emphasis supplied.)

The Court determined that Congress had not preempted the field and precluded state regulation despite the legislative mandate specifically requiring the Interstate Commerce Commission to promulgate regulations concerning rates of depreciation. There is a striking factual similarity between the facts in the *Northwestern* case and those presented in the present case. In each instance many years had elapsed since Congress had delegated the administrative body the power to regulate the activity in question. In neither case had the administrative body implemented its delegated power prior to the exercise of the state action under consideration.

Another Supreme Court case of the same import is *H. P. Welch Co. v. New Hampshire, supra*, where an order of the New Hampshire State Highway Commission suspended the registration certificate of an interstate motor carrier for violating a state statute declaring unlawful the operation of motor vehicles on state highways by drivers who had been continuously on duty for more than twelve

hours. It was urged that the state law had been superseded by the Federal Motor Carrier Act, 49 U.S.C.A. Section 304. In holding that state legislation was not precluded by the Federal Motor Carrier Act, the Court made the following observations:

> "Appellant does not suggest that prior to congressional action the state was without power, for protection of persons and property, to regulate use of its roads as provided in Section 8, and to enforce obedience in accordance with Section 11. (Citing many cases.) The violations for which the State Commission suspended Appellant's registration certificate occurred after the effective date of the Federal Act and before the Interstate Commerce Commission made its order. Without so deciding, we assume, so far as concerns the period of continuous service condemned by the State Commission, that when the Federal regulations take effect they will operate to supersede the challenged provisions of the state statute. *Thus, the sole question is whether Congress intended that from the time of the Federal enactment until effective action by the Commission, there should be no regulation of periods of continuous operation by drivers of motor vehicles hauling in interstate commerce.* Our decisions provide no formula for discovering measures such as that under consideration. Here, the way is made clear by the language and context considered in connection with existing conditions. Section 204(a) definitely imposes upon the Commission the duty to 'regulate' but merely authorizes it to establish reasonable requirements with respect to, inter alia, qualifications and maximum hours of service of employees and safety of operation and equipment. The distinction intended between duty imposed and action permitted is more striking in view of the matters that, along with qualifications and hours of service of drivers, are committed to the discretion of the Commission." (Emphasis supplied.)

These cases clearly indicate that "where federal power has been delegated but lies dormant and unexercised," the states' power to act with respect to matters of local concern is not necessarily superseded. See *Bethlehem Steel Co.* v. *New York Labor Rel. Bd.*, 330 U.S. 775 (1947). In each case the effect of federal legislation on state regulation is a question of Congressional intent as derived from the statute itself, its primary purpose and the judicial construction that has been placed thereon. *Guss* v. *Utah L. R. B.*, 353 U.S. 1, (1957); *H. P. Welch Co.* v. *New Hampshire*, *supra*.

**b. Did Congress Intend To Curtail State Power?**

Ever since *Cooley* v. *Port Wardens*, 12 How. 299, 13 L. Ed. 996 (1851), it has been recognized that state regulatory power, particularly the police powers, may be exercised in areas where federal authority has not been exerted, even though the state regulation has some impact on interstate commerce. Prior to 1938 the Supreme Court sustained state action such as is involved herein,[4] and held that this residuum of state power over matters of local concern included price regulation conservation measures designed to curb economic waste of natural resources. *Lacoste* v. *Department of Conservation*, 263 U.S. 545 (1924). In light of this judicial background, the Supreme Court expressly determined that the Oklahoma minimum price law was a valid exercise of state power which did not do violence to the commerce clause of the Constitution since uneconomic dissipation of natural resources was a matter of legitimate local interest. *Cities Service Gas Co.* v. *Peerless O. & G. Co.*,

[4] *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190 (1900); *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); *Walls* v. *Midland Carbon Co.*, 254 U.S. 300 (1920); *Bandini Petroleum Co.* v. *Superior Ct.*, 284 U.S. 8 (1931); *Champlin Refining Co.* v. *Corporation Com.*, 286 U.S. 210 (1932); *Henderson Co.* v. *Thompson*, 300 U.S. 258 (1937); *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55 (1936); *Bayside Fish Flour Co.* v. *Gentry*, 297 U.S. 422 (1935).

*supra*. The *Cities Service* case removed any question as to the power of the state of Oklahoma to enter the orders in question prior of the enactment of the Natural Gas Act of 1938. Therefore, the sole question in this case is whether Congress intended that from the time of the enactment of the Natural Gas Act until implemented by the Federal Power Commission, there should be no state regulation over matters of local concern which are considered within the purview of the Act.

The fundamental Congressional purpose underlying the Natural Gas Act was to create a comprehensive and effective regulatory scheme, complementary in its operation to those powers already possessed by the states, and in no manner usurping their authority. *Public Utilities Com.* v. *United Fuel Gas Co.*, 317 U.S. 456 (1943); *Federal Power Com.* v. *Hope Nat. Gas Co.*, 320 U.S. 591 (1944). The Supreme Court has repeatedly recognized this Congressional intent in construing the Natural Gas Act as not impairing state powers existing prior to 1938.[5] Congress did not intend to cut down on state regulatory power, but rather to supplement it by closing the gap between federal and state powers created by prior decisions of the Supreme Court, *Panhandle E. Pipeline Co.* v. *Public Serv. Com.*, 332 U.S. 507 (1947), and the measure of this gap is determined by Supreme Court constitutional decisions[6] prior to the Act. *Federal Power Com.* v. *East Ohio Gas Co.*, 338 U.S. 464 (1952).

In *Interstate N. Gas Co.* v. *Federal Power Com.*, 331 U.S.

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[5] *Illinois Nat. Gas Co.* v. *Central Ill. Pub. Serv. Co.*, 314 U.S. 498, 506-508 (1942); *Public Utilities Com.* v. *United Fuel Gas Co.*, *supra*; *Federal Power Com* v. *Hope Nat. Gas Co.*, *supra*; *Colorado Interstate Gas Co.* v. *Fed. P. Com.*, 324 U.S. 581, 599, 600 (1945); *Interstate N. Gas Co.* v. *Federal Power Com.*, *infra*; *Panhandle E. Pipe Line Co.* v. *Public Ser. Com.*, *infra*; *Federal Power Commission* v. *Panhandle E. P. Co.*, 337 U.S. 498, 502-504 (1949); *Federal Power Com.* v. *East Ohio Gas Co.*, *infra*.

[6] See footnote 4.

682 (1947), the Court recognized this limitation on the powers granted to the Federal Power Commission by the Natural Gas Act:

> " * * * Clearly, among the powers thus reserved to the states is the power to regulate the physical production and gathering of natural gas in the interest of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the states full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the state of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach. * * * "

This construction of the Act was reaffirmed in *Panhandle E. Pipe Line Co.* v. *Public Serv. Com., supra,* where the Supreme Court emphasized that the purpose of the Act was to complement state regulation then existing, not to abrogate or supersede it.

> "*The Act, though extending Federal regulation, had no purpose or effect to cut down state power.* On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of Federal regulation to supplement and reinforce it in the gap created by the prior decisions. The Act was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way. This appears not merely from the situation which led to its adoption and the legislative history, including the committee reports in Congress cited above, but most plainly from the history of Section 1(b) in respect to the changes which took place in reaching its final form.
>
> "It would be an exceedingly incongruous result if a

statute so motivated, designed and shaped to bring about more effective regulation, and particularly more effective state regulation, were construed in the teeth of those objects, and the import of its wording as well, to cut down regulatory power and to do so in a manner making the states less capable of regulation than before the statute's adoption. Yet this, in effect, is what Appellant asked us to do. For the essence of this position apart from standing directly on the commerce clause, is that Congress by enacting the Natural Gas Act has 'occupied the field,' i.e., the entire field open to Federal regulation, and thus has relieved its direct industrial sales of any subordination to state control.

"*The exact opposite is the fact. Congress, it is true, occupied a field. But it was meticulous to take in only territory which this court had held the states could not reach.* That area did not include direct consumer sales, whether for industrial or other uses. Those sales had been regulated by the states and the regulation had been repeatedly sustained. In no instance reaching this court has it been striken down." (Emphasis supplied.)

The intent of Congress was to mold the Natural Gas Act so that it would not interfere with or preclude the regulatory power possessed by the states prior to 1938, which included the power to impose price regulation in the interest of conservation. *Lacoste* v. *Department of Conservation, supra.* The rate regulation provisions of the Act were not intended to abrogate state power until the Federal Power Commission implemented the paramount federal authority. *Northwestern B. T. Co.* v. *Nebraska State R. Com., supra; Missouri P. R. Co.* v. *Larabee Flour Mills Co., supra.* The Commission declined to take jurisdiction over independent producers and the federal power lay "dormant and unexercised." See Justice Burton's dissent, in which Justice Clark joins, in *Guss* v. *Utah, L. R. B., supra.* Therefore, the State of Oklahoma was free "to make those regulations conducive

to the welfare and convenience of its citizens." *Missouri P. R. Co.* v. *Larabee Flour Mills Co., supra.*

### c. A Case Of First Impression.

In *Panoma*, the Supreme Court determined that the Oklahoma minimum price law conflicted with the paramount Federal jurisdiction over rates for natural gas which had been implemented by the Series 174 orders[7] issued by the Federal Power Commission pursuant to the mandate contained in the *Phillips* case.[7] In the *Panoma* case the Supreme Court did not seek to determine the retroactive invalidity of the Oklahoma minimum price law, and, indeed, that issue was not before the Court for decision, and was not mentioned in the argument or briefs presented to the Court. It was mentioned by Justice Douglas in his dissent (p. 45) but there is nothing in the briefs or record to show that this point was passed upon by the Court. It was not a point material to the decision in that case and would have been *obiter dictum*. The sole question was whether the Oklahoma minimum price law could continue to stand in the face of the regulations promulgated by the Federal Power Commission. The Court expressly stated that the result reached was controlled by the *Phillips* case in which the validity of prior state regulation was not discussed. An examination of the *Panoma* and *Phillips* cases shows that they are readily distinguishable on the facts and issues presented and are not determinative of this proceeding which presents issues which have not heretofore been passed upon.

The composite effect of the *Panoma* decision was to vitiate the Oklahoma minimum price law, because federal jurisdiction had been implemented by the Series 174 orders promulgated by the Federal Power Commission during the

[7] Order No. 174 was issued July 16, 1954; Order No. 174-A was issued August 6, 1954, and Order No. 174-B was issued December 17, 1954.

summer and fall of 1954,[8] and thus, *at that time*, the theretofore valid state regulations were superseded. Congress did not intend to preclude state action by the mere enactment of the Natural Gas Act and thereby create a hiatus until the Federal Power Commission acted. The existing state power over matters of local concern was to remain unimpaired until the Commission implemented its jurisdiction.

The Natural Gas Act was not intended to preclude state action which was considered valid prior to 1938.[10] Its primary purpose was to complement and supplement the existing state jurisdiction. This underlying purpose, considered in conjunction with those cases holding that the Natural Gas Act did not impair state powers existing prior to 1938 and with the judicial interpretations of the Act, shows that Congress did not intend to supersede or preclude state regulation over matters of local concern such as the Oklahoma minimum price laws, at least until the paramount federal authority over such matters had been exercised by the Federal Power Commission.

## II.

**The Power Of This Court Was Exhausted When It Held That 6.253¢ Per MCF Was The Lawful Rate On File On June 7, 1954. And Was The Only Rate That Could Be Filed By Dorchester And The Further Orders Of This Court Are Invalid.**

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[8] See footnote 6.

[9] This question was not considered in the Supreme Court's decision in *Cities Service Gas Co. v. Kansas, supra.*

[10] It will not be presumed that Congress in enacting legislation within its constitutional authority over interstate commerce intended to supersede or preclude state legislation on matters of local concern unless its purpose to do so is clearly manifested. *Southern Pacific Co. v. Arizona, supra; H. P. Welch Co. v. New Hampshire, supra.*

In its opinion and judgment entered in conformity therewith, this Court has not only found the Commission to be in error in its holding as to the legally effective rate on June 7, 1954, but has dictated subsequent Commission action to be taken with respect thereto. This the Court is without authority to do.

The Court laid bare the error of the Commission when it held that 6.253¢ and not 9.8262¢ was the rate in effect under the contract on June 7, 1954. Having done this, it exhausted its power under the statute and could go no further. The Supreme Court has firmly established that the function of a court reviewing an administrative action ends when an error of law is laid bare and at that point the matter should be remanded for reconsideration by the administrative body. *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17 (1952); *Federal Trade Comm.* v. *Morton Salt Co.*, 334 U.S. 37 (1948); *Federal C. C.* v. *Pottsville Broadcasting Co.* 309 U.S. 134 (1940); *Sunray Mid-Continent Oil Company* v. *F.P.C.*, 353 U.S. 944 (1957).

In *Sunray*, the Supreme Court said:

> "The power of the Court of Appeals in reviewing the order of the Federal Power Commission was exhausted when it held that the Commission had authority under Sec. 7(c) and (e) of the Natural Gas Act to issue certificates of public convenience and necessity of limited duration. Securities and Exchange Commission v. Chenery Corp., 318 U.S. 80.

**a. The Court Should Remand This Case To The Commission For Further Proceedings Not Inconsistent With The Opinion Of The Court As The Commission May Deem Desirable As Was Done In Sierra.**[11]

[11] *Sierra Pacific Power Co.* v. *F. P. C.*, 350 U.S. 348, 356.

The order of January 5, 1956, which the Court modified, was entered in the rate proceeding in Docket G-6505. Such proceeding was terminated because of the determination made by the Commission that 9.8262¢ was the legally effective rate on June 7, 1954 (R. pp. 336a, 340a-343a). Under the law as the Commission and the parties understood it on January 5, 1956, there was no requirement for a finding by the Commission as to whether or not the contract rate was so low as to have an adverse effect on the public interest. If such is the case, then, of course, it is purely a question for the Commission. *Sierra* (p. 356). The fact that proceeding was instituted as a 4(e) proceeding instead of a 5(a) proceeding is not material. *Mobile* teaches that there are no separate proceedings under Section 4(e) or 5(a) (350 U.S. 332, 340-1). Indeed, *Mobile* declares that the Commission's power and purpose of review is the same under both 5(a) and 4(e) (p. 341).

*Sierra* makes this even clearer. Upon subsequent motion of Sierra Pacific, the Court of Appeals changed the last paragraph of its original opinion (223 F. 2d 605) which authorized the Commission to either dismiss or hold further proceedings under Section 206(a) to a direction to dismiss without prejudice to "a NEW proceeding under Section 206(a)" (237 F. 2d 756).

The Supreme Court, in *Sierra*, amplifying *Mobile*, said:

> "If the proceedings here satisfied *in substance* the requirements of 206(a) it would seem immaterial that the investigation was begun as one into the reasonableness of the proposed rate rather than the existing contract rate" (p. 353).

Accordingly, the Supreme Court ordered no such dismissal in *Sierra* and in the last paragraph remanded the case to the Commission for further proceedings not inconsistent

with the opinion (p. 355). Sierra Pacific then moved to amend and supplement the last sentence of the Supreme Court's opinion as was done in the Court of Appeals. Sierra Pacific stated that the basis upon which the Court of Appeals ordered the amendment shown in 237 F. 2d 756 was that "all parties" assumed there was a distinction between a "proceeding" under Section 205(a) and 206(a). The Supreme Court denied the motion (356 U.S. 946), stating:

> "The respondent's motion to amend the opinion in this case, 350 U.S. 348, 100 L Ed 388, 76 S. Ct. 368, is denied without prejudice to the future determination of any issues that may arise as to the right of Sierra to restitution of the excess payments made pursuant to the Commission's invalid order."

The proceeding in Docket G-6505 has been kept alive by virtue of the appeal herein. If the public interest requires a determination and finding in that proceeding of the unlawfulness of the contract rate, then this Court should not at this time foreclose such a determination. This is a matter that is for the exclusive determination of the Commission. *Sierra, supra.*

**b. Modification Of Paragraph (D) To Order A Refund By Dorchester Of The Entire Excess Amount Paid Is Not Only Contrary To Law But Is A Futile Act Because Of Dorchester's Financial Position.**

The Court, in its judgment entered herein on February 26, 1958, states, inter alia:

> *". . . Paragraph (D) of said order be, and it is hereby modified so as to direct that the refund to be made by Dorchester to petitioner pursuant thereto be computed on the basis of the difference between 10c per Mcf and 6.253c per Mcf for the period from March 1, 1955, to January 5, 1956;".*

Thus, the Court modifies the January 5, 1956, order of the Commission and orders a refund by Dorchester on the terms and conditions as set forth in said Paragraph (D) except that the amount of the refund is the amount of the difference between 10¢ and 6.253¢.

The method and the manner of the refund are thus determined by the Court without giving the Commission an opportunity to determine how such refund might be made as being required in the public interest. This the Court cannot do.

Dorchester's financial position is summarized in the Examiner's decision (R. pp. 291a-297a). The Court might well so order, but such a judgment will be but an empty thing in the hands of Natural, or it will simply result in a foreclosure by the insurance companies of their prior liens on the leasehold estates and no refund will ever be realized by Natural or its customers. Furthermore, the January 5, 1956 order deals only with the period from March 1, 1955 to January 5, 1956. Any refunds that are due Natural cover the period from July 1, 1954 to the date of the settlement of the refund question. In this connection, equity and good conscience will require consideration of the fact that the contract price became 7.145¢ on July 1, 1956.

This is a matter which will require the expert administrative competency of the Federal Power Commission to make adjustments between the parties so as to provide for such a refund.

Furthermore, the Court errs in holding in effect that Dorchester is required to make one hundred per cent (100%) of the refund. Dorchester is the operator of the properties and is required by the Rules of the Commission (§154.91(b)) to make rate filings and other filings for all interests involved. Dorchester is the owner of only 3½% of the gas which was and is being produced. Cortez Corpo-

ration is the owner of the Senior Gas Payment payable out of 96½% of the production until $35,250,000, plus interest thereon, and additional sums have been produced (R. pp. 109a, 110a, 137a, 141a). Cortez's ownership is subject to the Deed of Trust to the First National Bank in Dallas securing the loans from the Metropolitan Life Insurance Company and the Mutual Life Insurance Company of New York. Dorchester's only interest in the gas until said Senior Gas Payment has been extinguished by 96½% of the production from the properties is a 3½% interest (R. p. 109a-110a, 137a-143a). It is obvious that at 6.253¢ that this is the only interest that Dorchester will have in the gas (R. p. 145a). This 3½% interest is, of course, subject to the prior mortgage of the insurance companies and Dorchester did not assume that debt. The production payment pledged to pay such debt is a separate economic interest in the property owned by Cortez and represents ownership of the gas in place by Cortez. *Thomas v. Perkins*, 301 U.S. 655 (1937). The separate nature of these economic interests is recognized for all purposes in the oil and gas industry and by the Internal Revenue Service. A copy of the Treasury Ruling secured in connection with this transaction showing that no part of the money paid for Cortez's account is attributable to Dorchester is attached hereto. (See Appendix, pp. 26-32.)

Natural was fully apprised of their transactions and knew that Dorchester was the owner of only 3½% of the production (R. pp. 115a-119a). All payments made by Natural since July 1, 1954, have been made to the First National Bank in Dallas as Trustee under the Deed of Trust and Mortgage securing Cortez's loan from the insurance companies in the principal amount of $35,000,000. *Dorchester did not request nor direct Natural to make the payments to the Trustee. Natural made these payments as a direct con-*

*sequence of its consent to the acquisition by Cortez of its ownership in the properties.* Natural, in a letter to Dorchester dated July 29, 1954, stated, inter alia:

> "We understand that you have succeeded to the gas reserves (above sea level) and other properties formerly owned by Panoma Corporation and dedicated to the above contract, subject to certain required payments, mortgages, and the terms of intervening documents. We further understand that these documents direct that all payments under our contract are to be made to First National Bank in Dallas as Trustee until we are otherwise notified. Will you please confirm this for our record.
>
> " • • • •
>
> "We ask you to advise us whether you now contend that the order of the Oklahoma Commission, No. 26096, is any longer valid, considering the effect of Order No. 174 of the Federal Power Commission. If you contend that there is compulsion or right in you to exact the price provided by the Oklahoma Corporation Commission, we further ask if you will undertake to reimburse us for any amounts paid above the contract price, with lawful interest thereon, in the event it appears that the contract price is the one correctly to be applied.
>
> "As the next payment is due about August 20, we would appreciate your prompt reply."

This letter was answered by Dorchester Corporation by letter of August 13, 1954 (R. pp. 92a-93a) in which Natural's attention was called to the nature of the transaction and the letter concluded with the following:

> " . . . With respect to your request that we undertake to reimburse you for any amounts paid above the contract price, you appreciate that only 3½% of the

runs under the Gas Purchase Contract accrue to the credit of Dorchester Corporation, and, accordingly, Dorchester Corporation is not in a position to furnish you with the undertaking requested."

Obviously, the Court is in error in ordering Dorchester to make restitution of 100% of such funds when it has neither received such funds nor has it had such funds applied for its legal and equitable benefit. Remand to the Commission without affecting Natural's right to restitution as was done by the Supreme Court in *Sierra* is the proper procedure.

The expert competence of the Federal Power Commission will be required to work out an adequate procedure to effect any refund which the courts finally might require to be repaid to Natural. This can only be done under the circumstances from future payments to be made by Natural for gas received hereafter.

## CONCLUSION

Wherefore, Petitioner prays that this Honorable Court grant this Petition for Rehearing and hold:

(a) That the rate of 9.8262c was the legal contract rate in effect on June 7, 1954, and will remain the legal filed rate until set aside by an appropriate order of the Federal Power Commission, or, in the alternative

(b) That if this Court should hold that the legal rate in effect on June 7, 1954, is 6.253c that the portion of the judgment of this Court, as follows:

> "The Commission's order of January 5, 1956 be, and it is hereby modified so as to provide that effective as of the date thereof, the rate of 6.253c per Mcf be reinstated as the effective rate for the period prior to March 1, 1955; Paragraph (D) of said order be, and it is hereby modified so as to direct that the refund to be made by Dorchester to petitioner pursuant thereto be computed on the

basis of the difference between 10¢ per Mcf and 6.253¢ per Mcf for the period from March 1, 1955 to January 5, 1956;"

be deleted from the opinion and judgment of the Court; and

(c) The opinion and judgment of the Court be modified so as to provide for remand of the case to the Federal Power Commission for such further proceedings not inconsistent with the opinion and judgment as the Commission may deem desirable.

Respectfully submitted,

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## CERTIFICATE OF COUNSEL

I, Gene M. Woodfin, one of the attorneys for Intervenor, Dorchester Corporation, in accordance with Rule 33 of this Court do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay. I further certify that copies of this petition have been served upon counsel for Petitioner Natural Gas Pipeline Company of America by mail in accordance with the Rules of this Court.

.....

U. S. TREASURY DEPARTMENT
Washington 25

Jan. 8, 1954

[SEAL]

Office of
Commissioner of Internal Revenue

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Address Reply To
Commissioner of Internal Revenue
And Refer To
T:R:C-AS
T:S:EX
LWP

Messrs. Dunnington, Bartholow & Miller
Chrysler Building East
161 East 42nd Street
New York 17, New York

In re: Request for a Ruling
Dorchester Corporation
Nalam Corporation
Cortez Oil Corporation

Gentlemen:

This is in reply to your letter of April 19, 1954, and to your letter of May 14, 1954, which presented additional information and modified the request for a ruling presented in your original letter. The facts upon which your request is based are as shown in your letters, in the Exhibits attached to your original letter, and as summarized briefly below.

Dorchester Corporation (hereinafter called Dorchester) will purchase certain assets, consisting of two gasoline plants in the Guymon-Hugoton Field in Oklahoma and Kansas and the Panhandle Field in Texas, respectively, together with a pipe-line gathering system, railway tank cars, trucks, etc., for $3,000,000 in cash and $3,500,000 in secured junior notes (payable later after certain terms are met) from five individuals (hereinafter called Sellers). Dorchester will agree to operate the plants for the purpose of processing gas from producing properties owned by Sellers in the fields mentioned and to pay over to owners of economic interests in the properties 45 percent of plant gross income, the payments to be reduced to 40 percent under certain stated circumstances.

Nalam Corporation (hereinafter called Nalam) will buy the producing properties for $37,000,000 subject to the processing agreement referred to, and subject to a Junior Gas Payment of $75,000,000 retained by Sellers commencing after Nalam shall have received out of the operation of the properties $38,000,000 net as set forth at pages 5 and 6 of your Exhibit B. The Junior production payment retained by Sellers will be payable out of 75 percent to 80 percent of Nalam's income from dry gas and will terminate prior to full payment if and when the estimated gas reserves under the properties declines below 100 billion cubic feet.

Nalam will execute a deed of trust, with the properties owned by it as security, in favor of First National Bank of Dallas acting as Trustee for Metropolitan Life Insurance Company and Mutual Life Insurance Company of New York. The insurance companies will loan Nalam $35,000,000. Nalam will pay the loan, plus 5 percent interest per annum on the unpaid principal balances payable monthly, plus 3⅛ percent deferred interest on the unpaid principal balances, which deferred interest becomes payable when the

unpaid balance of principal becomes due, at final maturity or by acceleration. When the accumulated deferred interest becomes due and payable it will begin to draw interest at 5 percent per annum until paid. Payments will be made out of a percentage of its proceeds from operation starting at 96 percent and later reducing to a minimum of 13 percent.

Nalam will, following the execution and delivery of the notes and deed of trust, but on the same day, assign all the leaseholds and equipment to Dorchester, subject to the deed of trust, the processing agreement and the junior production payment, for $2,000,000, and will retain a "Senior Gas Payment". Nalam's Senior Gas Payment will consist of an amount equal to accumulated legal fees and other expenses, payable out of 96½ percent of its production, plus a primary amount equal to $35,250,000 and an amount equal to interest at 5 percent per annum on the unliquidated balances payable out of 96½ percent of production, plus a secondary amount of (a) $100,000, (b) an amount equal to accumulated interest on $35,000,000 at 3⅛ percent per annum to completion of payment of the primary amount, and (c) an amount equal to interest at 5 percent per annum on the unliquidated balances of (b) beginning after payment and discharge of the primary amount. The secondary amount will be payable out of smaller fractions of production, commencing after payment and discharge of the primary amount. The $2,000,000 received from Dorchester plus the $35,000,000 borrowed from the insurance companies will constitute the source of the $37,000,000 to be paid by Nalam to Sellers.

In the final transaction Nalam will assign its retained Senior Gas Payment, subject to Nalam's obligations under the notes and deed of trust, to Cortez Oil Corporation (hereinafter called Cortez), which will pay Nalam $25,000 cash and will pay all expenses incident to the transaction.

At the conclusion of these transactions Nalam will have received $25,000 for performing the functions outlined above, will retain no interest in the gas in place or in the tangible properties, and will be relieved of all liabilities for any of the obligations incurred. Until the principal amount of the loans have been repaid and assuming no events of default have occurred, 96 percent of the proceeds of production, including that portion of the sale price of the liquefied products attributable to the leases, will be applied by the trustee on the Notes, ½ percent will go to Cortez as the owner of the Senior Gas Payment (which is payable out of 96½ percent of production) and 3½ percent will go to Dorchester. Dorchester will operate the leases and will be obliged to pay operating expenses and ad valorem taxes. It will have no personal liability on the Notes and the Lenders can look to Dorchester's share of the proceeds of production for application on the Notes only in case of default.

You ask that a ruling be issued to the following effect:

1. The Senior Gas Payment reserved by Nalam will be a depletable economic interest in gas in place and will retain this character in the hands of Cortez. Cortez will be entitled to use cost depletion as a deduction from the gross income generated by the Senior Gas Payment.

2. Cortez' cost for the Senior Gas Payment will be equal to the principal amount of the indebtedness represented by the Notes which it assumed, plus $25,000 and the other liabilities assumed and costs incurred by Cortez in acquiring the Senior Gas Payment.

3. Nalam's cost in the properties purchased from Sellers is allocable between the interests sold to Dorchester and the interest represented by the Senior Gas Payment

which Nalam reserved and sold to Cortez, such allocation being made in accordance with the respective fair market values of the two interests sold. Each of such two sales by Nalam is a taxable event and the total income or gain taxable to Nalam in the transactions in question will be the sum of the profits resulting from the two sales, which, under the facts stated in taxpayer's application, appears to amount to $25,000.

4. No part of the income from that production applicable to the Senior Gas Payment or to the Junior Gas Payment will be taxable to Dorchester since all such production will be excludable from the gross income of Dorchester.

5. To the extent that Dorchester pays out of income from production ad valorem taxes and similar assessments attributable to the value of the Senior Gas Payment owned by Cortez, the payments so made will be excluded from the gross income of Dorchester and will constitute additional depletable income to Cortez attributable to the gas payment.

6. Since Dorchester will be deemed to have paid such taxes as the agent of Cortez, the amounts of such taxes will be deductible by Cortez.

7. Similarly all such ad valorem taxes or assessments applicable to the Junior Gas Payment reserved by Sellers which are paid by Dorchester out of production also will be excludable from the gross income of Dorchester and from the gross income of Cortez.

Based upon the statements of fact in your letters and exhibits attached thereto, it is held that:

1. The assignment by Nalam of the properties to Dorchester in a transaction whereby it will receive cash and will retain a contingent gas payment will constitute

a sale of a portion of the property and a retention of a depletable economic interest (Thomas V. Perkins, 301 U.S. 655, which held that a contingent production payment paid out was not includable in the payor's (operators) gross income). The disposal of that interest to Cortez will not change its character as a depletable economic interest subject to the depletion allowance under section 39.114(b)(3) of Regulations 118.

2. Cortez' cost for the Senior Gas Payment will be equal to the principal amount of the indebtedness represented by the Notes which it assumed, plus $25,000 and the other liabilities assumed and costs incurred by Cortez in acquiring the Senior Gas Payment.

3. Nalam's cost in the properties purchased from the original owners is allocable between the interests sold to Dorchester and the interest represented by the Senior Gas Payment which Nalam reserves and sells to Cortez, such allocation being made in accordance with the respective fair market values of the two interests sold. Each of such two sales by Nalam is a taxable event and the total income or gain taxable to Nalam in the transactions in question will be the sum of the profits resulting from the two sales, which, under the facts stated in the request for a ruling, appears to amount to $25,000.

4. The Senior Gas Payment has been defined above as an economic interest, depletable in the hands of the owner. The Junior Gas Payment is identical to the Senior Gas Payment in its characteristics. Neither is includable in Dorchester's gross income (Thomas v. Perkins, 301 U.S. 655).

5. Ownership by Cortez of the Senior Gas Payment represents ownership of gas in place. To the extent that ad-

valorem and similar taxes paid by Dorchester apply to Cortez' share in the ownership of the property the payments by Dorchester will be excludable from Dorchester's gross income (GCM 26526, C. P. 1950-2, 40), and includable in the depletable gross income of Cortez.

6. The payments by Dorchester for the benefit of Cortez, referred to above, will be deductible by the latter in computing net income from proceeds of the contingent production payment, to the extent such payments are deductible for income tax purposes.

7. The same principles (5 and 6 above) will apply to the Junior Gas Payment to be reserved by the original owners upon assignment of the leases to Nalam.

Very truly yours,

/s/ H. T. Swartz

Director, Tax Rulings Division

Harrington & Marsh, et al, owners of leaseholds, gas plants, etc. enter into Gas Purchase Contract with Natural Gas Pipeline Company of America dated as of December 1, 1946.

↓

Leaseholds, gasoline plants, etc. and Contract assigned to Panoma Corporation as of October 1, 1948.

↓

July 1, 1954, Panoma Corporation dissolved. All assets distributed to stockholders, i.e. Harrington & Marsh, et al.

Stockholders, Harrington & Marsh, et al, convey gasoline plants and gatherings system, automotive equipment, etc., but not leaseholds, wells or well equipment, to Dorchester Corporation for 6-1/2 million dollars. Dorchester borrows 2-1/2 million dollars on 5-year note from Chase National Bank and gives first mortgage on gasoline plants secured by a Mortgage and Deed of Trust from Dorchester to Donald Scott, Jr., Trustee, dated as of July 1, 1954. Loan repayable at rate of $125,000 per quarter commencing October 1, 1954. Sellers reserve 3-1/2 million dollars purchase money note on which principal payments of $125,000 per quarter, but not interest payments, are deferred until October 1, 1959, unless Chase loan is paid off prior to July 1, 1959, in which event quarterly payment commences on quarter following discharge of Chase loan. Provision made for net cash income sinking fund commencing in 1955.

Stockholders, Harrington & Marsh, et al, enter into Processing Agreement with Dorchester Corporation, now owners of gasoline plants and gathering system, covering the gathering of the gas, the extraction of liquids and delivery of residue to Natural. Leasehold interests to receive 45% of liquids attributable to "owners' gas" for 5 years and thereafter until weighted average price of gas reaches 12¢ at 14.65 psia, then leasehold interest to receive 40%. Plant owner to pay to leasehold interest for plant fuel and shrinkage on basis of the price received from the pipeline purchaser for residue.

↓

**Gasoline plants and gathering system owned by Dorchester subject to first mortgage held by Chase National Bank and second mortgage held by stockholders, i.e. Harrington & Marsh, et al, and burdened with obligations under Processing Agreement.**

Stockholders, owners of leasehold interest, convey leaseholds to Nalam Corporation for 37 million dollars in cash, reserving the below sea level horizons and a deferred production payment in the amount of 75 million dollars payable from 80% of net wellhead volume of gas attributable to leasehold interests produced until 10 million dollars had been recovered thereunder, then out of 75% of net wellhead volume of gas attributable to leasehold until full payment is discharged or gas reserves reach a minimum of one hundred billion feet. Deferred production payment of 75 million dollars commences when total leasehold proceeds net to working interest (including liquid value, plant fuel and shrinkage payment under Processing Agreement) shall have produced 38 million dollars with interest at 5% per annum. Nalam also acquired the liquid value payment, plant fuel and shrinkage payment payable to owners of leasehold interest under Processing Agreement.

↓

Nalam mortgaged all interests acquired by it to Metropolitan Life Insurance Company and Mutual of New York to secure a loan of 35 million dollars for a term of 15 years at 5% interest, plus 3-1/8% simple deferred interest which accrues and is payable when the final installment on the loan is due. The matured amount of the deferred 3-1/8% interest is subject to 5% annual penalty interest. The lien is evidenced by the Deed of Trust, Mortgage and Assignment from Nalam to First National Bank in Dallas, Texas, dated July 1, 1954.

↓

Subject to the Deed of Trust to First National Bank in Dallas, the Processing Agreement, and deferred production payment reserved by stockholders, i.e. Harrington & Marsh, et al, Nalam conveyed leaseholds and rights acquired from stockholders to Dorchester for 2 million dollars in cash. Dorchester assumed the obligations to operate the leaseholds but did not assume the mortgage. Nalam reserved the following in such conveyance:

(1) From 96-1/2 percent of the production the sum of $434,250.
(2) From 96 percent of the production after $434,250 shall have been received, the sum

$35,000,000 payment at 5 percent, from 13 percent of the production for the following ten years, from 14 percent of the production for the next ten years, from 19 percent of the production thereafter, the amount of the deferred matured interest at 5 percent plus the sum of $100,000.
(4) From 1/2 of 1 percent of the production com-

October 1, 1959, unless Chase loan is paid off prior to July 1, 1959, in which event quarterly payment commences on quarter following discharge of Chase loan. Provision made for net cash income sinking fund commencing in 1955.

Stockholders, Harrington & Marsh, et al, enter into Processing Agreement with Dorchester Corporation, now owners of gasoline plants and gathering system, covering the gathering of the gas, the extraction of liquids and delivery of residue to Natural. Leasehold interests to receive 45% of liquids attributable to "owners' gas" for 5 years and thereafter until weighted average price of gas reaches 12¢ at 14.65 psia, then leasehold interest to receive 40%. Plant owner to pay to leasehold interest for plant fuel and shrinkage on basis of the price received from the pipeline purchaser for residue.

**Gasoline plants and gathering system owned by Dorchester subject to first mortgage held by Chase National Bank and second mortgage held by stockholders, i.e. Harrington & Marsh, et al, and burdened with obligations under Processing Agreement.**

in cash, reserving the below sea level horizons and a deferred production payment in the amount of 75 million dollars payable from 80% of net wellhead volume of gas attributable to leasehold interests produced until 10 million dollars had been recovered thereunder, then out of 75% of net wellhead volume of gas attributable to leasehold until full payment is discharged or gas reserves reach a minimum of one hundred billion feet. Deferred production payment of 75 million dollars commences when total leasehold proceeds net to working interest (including liquid value, plant fuel and shrinkage payment under Processing Agreement) shall have produced 38 million dollars with interest at 5% per annum. Nalam also acquired the liquid value payment, plant fuel and shrinkage payment payable to owners of leasehold interest under Processing Agreement.

Nalam mortgaged all interests acquired by it to Metropolitan Life Insurance Company and Mutual of New York to secure a loan of 35 million dollars for a term of 15 years at 5% interest, plus 3-1/8% simple deferred interest which accrues and is payable when the final installment on the loan is due. The matured amount of the deferred 3-1/8% interest is subject to 5% annual penalty interest. The lien is evidenced by the Deed of Trust, Mortgage and Assignment from Nalam to First National Bank in Dallas, Texas, dated July 1, 1954.

Subject to the Deed of Trust to First National Bank in Dallas, the Processing Agreement, and deferred production payment reserved by stockholders, i.e. Harrington & Marsh, et al, Nalam conveyed leaseholds and rights acquired from stockholders to Dorchester for 2 million dollars in cash. Dorchester assumed the obligations to operate the leaseholds but did not assume the mortgage. Nalam reserved the following in such conveyance:

(1) From 96-1/2 percent of the production the sum of $434,250.
(2) From 96 percent of the production after $434,250 shall have been received, the sum of $35,000,000 at 5 percent interest.
(3) From 10 percent of the production for five years commencing with the discharge of the $35,000,000 payment at 5 percent, from 13 percent of the production for the following ten years, from 14 percent of the production for the next ten years, from 19 percent of the production thereafter, the amount of the deferred matured interest at 5 percent plus the sum of $100,000.
(4) From 1/2 of 1 percent of the production commencing with the time that the $434,250 shall have been received and continuing until the $35,000,000 at 5 percent is discharged, and thereafter from 86-1/2 percent of the production, the sum of $250,000 at 5 percent interest

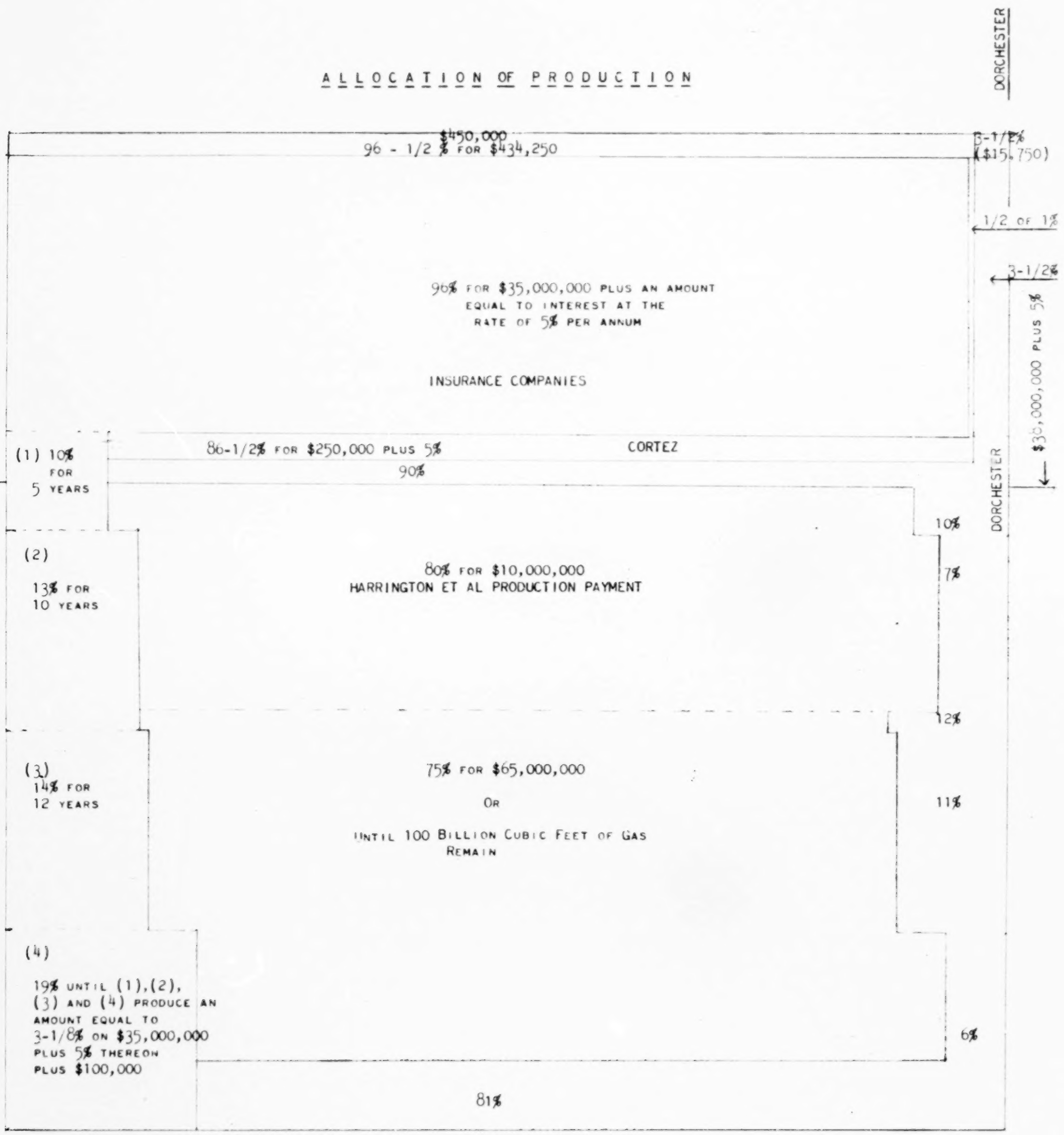
Leasehold interest held by Dorchester subject to the following in order as shown:

(1) Processing Agreement;
(2) Deferred production payment by stockholders, i.e. Harrington & Marsh, et al, in the amount of 75 million dollars;
(3) Mortgage and Deed of Trust to First National Bank in Dallas.
(4) Reservation in conveyance from Nalam to Dorchester, all interest of which is now owned by Cortez.

**After conveyance to Dorchester, Nalam conveyed to Cortez Oil Corporation the reserved production payment as reserved in conveyance to Dorchester. Cortez assumed the debt and all obligations under the Mortgage and Deed of Trust securing the $35,000,000 loan from Metropolitan and Mutual.**

FEDERAL POWER COMMISSION DOCKET NO. G-6505
IN THE MATTER OF DORCHESTER CORPORATION
EXHIBIT NO. 3

## ALLOCATION OF PRODUCTION




## EXPLANATIONS

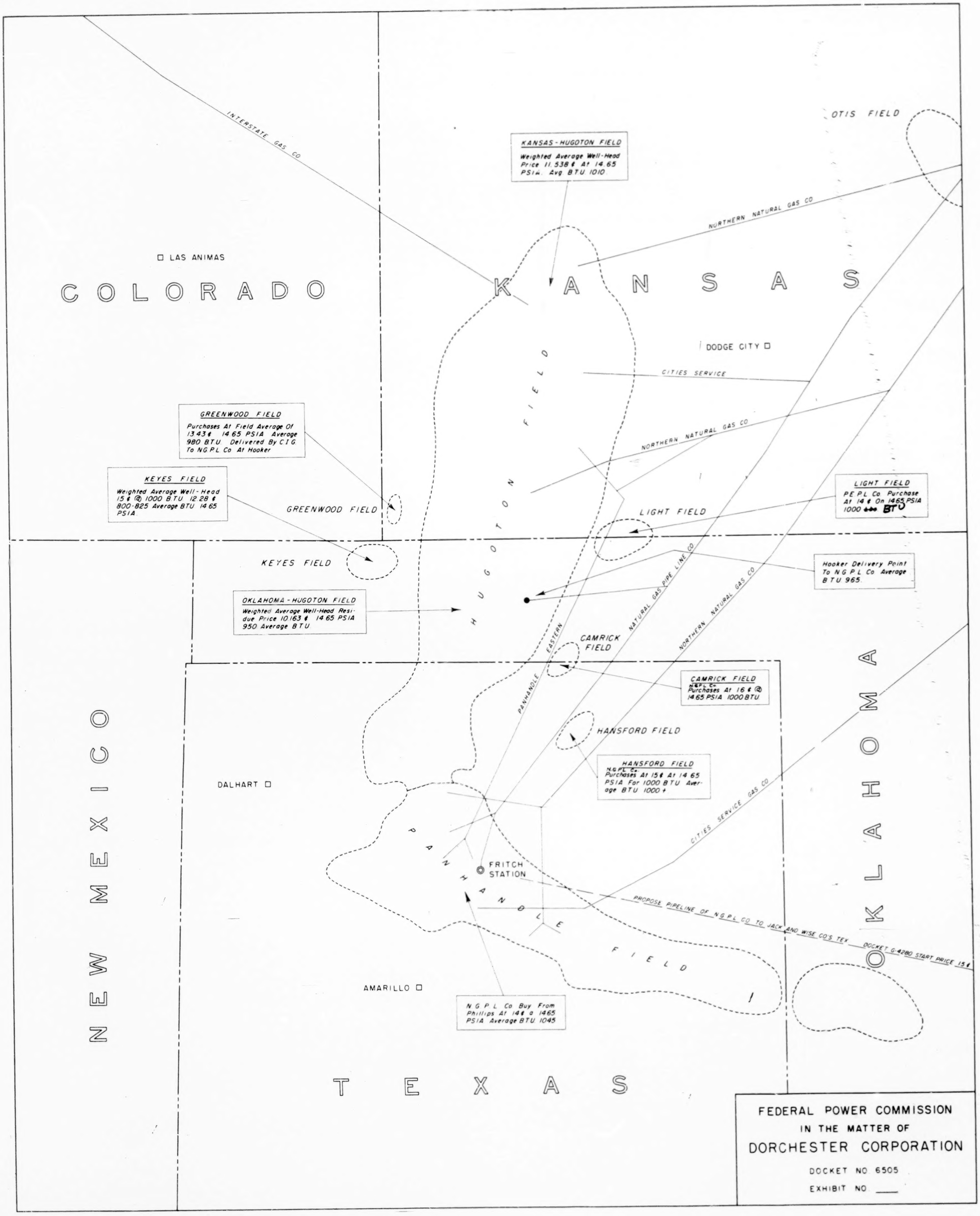
1. ALL OF THE PRODUCTION INDICATED EXCEPT THE HARRINGTON, ET. AL. PRODUCTION PAYMENT MORTGAGED TO SECURE THE LOANS MADE BY METROPOLITAN LIFE INSURANCE COMPANY AND THE MUTUAL LIFE INSURANCE.

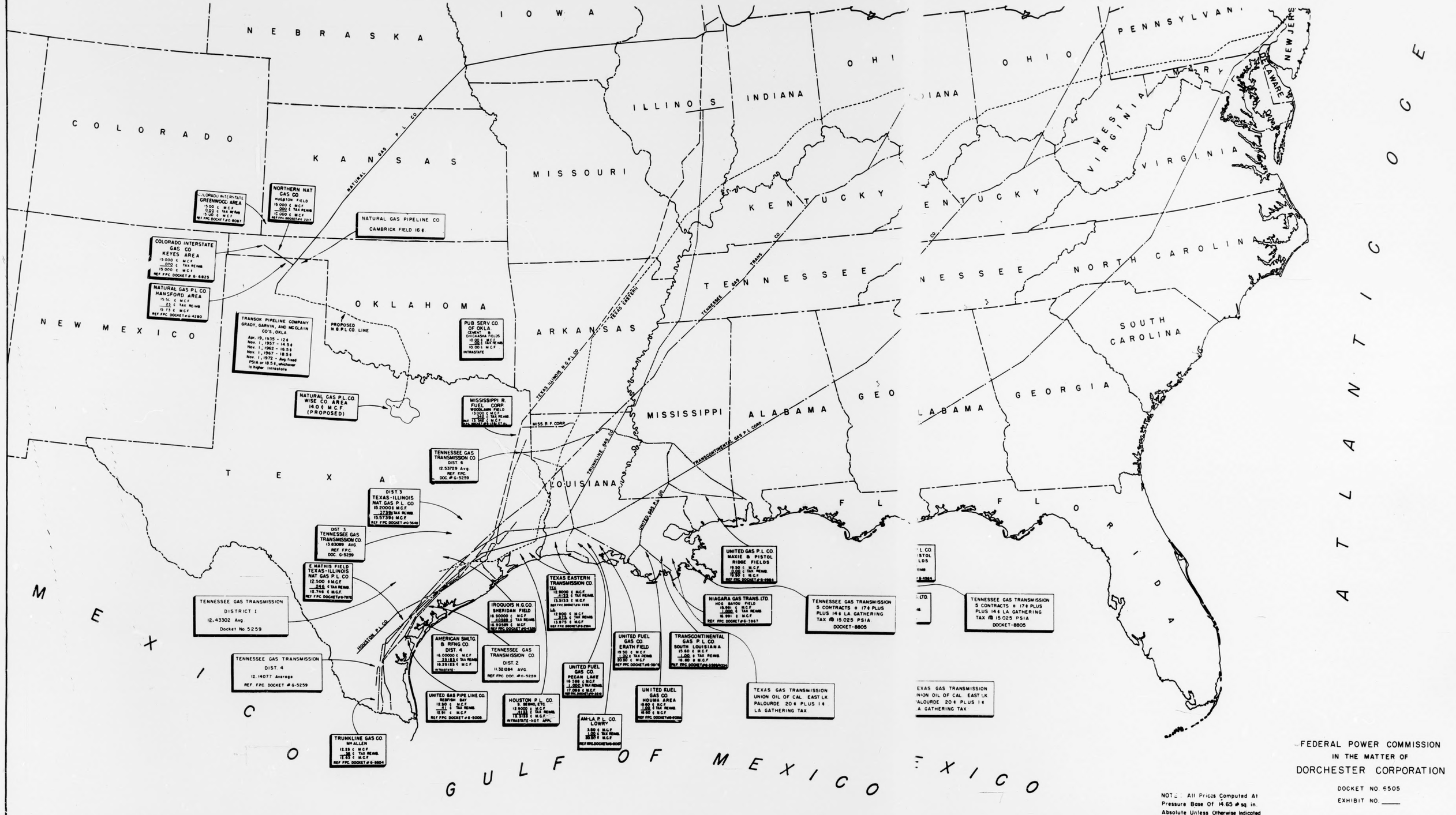
2. AFTER $35,000,000 PLUS 5 PERCENT REPAID TO INSURANCE COMPANIES LIEN SHRINKS TO THE 10% - 13% - 14% AND 19% INDICATED IN THE LEFT HAND COLUMN.

3. THE PRODUCTION PAYMENT RESERVED BY NALAM CORPORATION COVERS ALL OF THE PRODUCTION INDICATED EXCEPT: (I) THE HARRINGTON, ET. AL. PRODUCTION PAYMENT, AND (II) THAT PERCENTAGE OF THE PRODUCTION INDICATED IN THE RIGHT HAND COLUMN.

4. THE NALAM PRODUCTION PAYMENT INCLUDES 45 PERCENT OF THE LIQUIDS ATTRIBUTABLE TO "OWNERS' GAS" AS DEFINED IN THE PROCESSING AGREEMENT UNTIL THE WEIGHTED AVERAGE OF GAS SOLD EQUALS OR EXCEEDS 12¢ PER MCF AT WHICH TIME SUCH PERCENTAGE REDUCES TO 40 PERCENT.

5. THE HARRINGTON, ET. AL. PRODUCTION PAYMENT DOES NOT INCLUDE LIQUIDS.

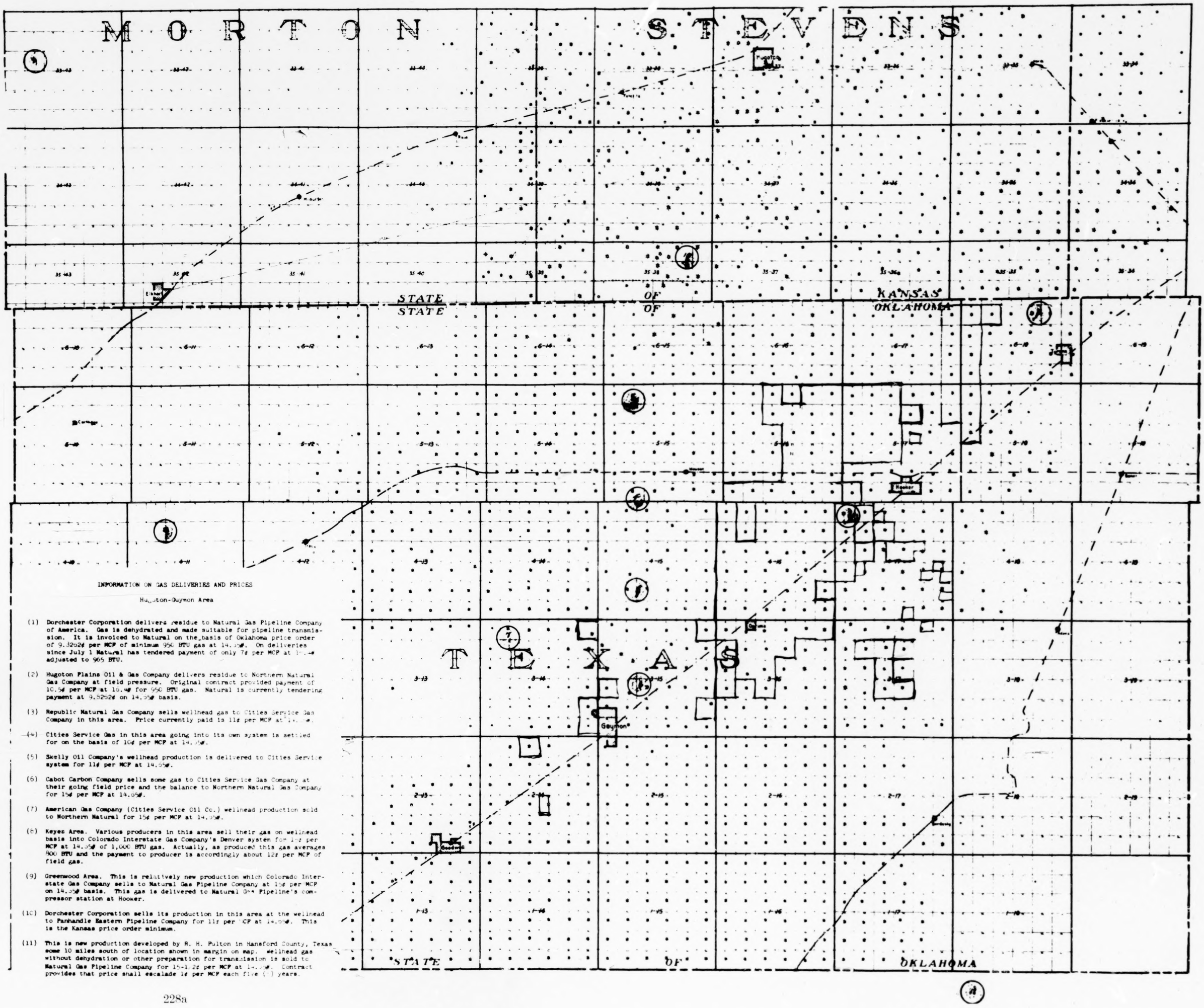

INTERSTATE GAS CO
LAS ANIMAS
COLORADO
KANSAS-HUGOTON FIELD
Weighted Average Well-Head Price 11.538¢ At 14.65 PSIA. Avg. B.T.U. 1010
OTIS FIELD
NORTHERN NATURAL GAS CO
K A N S A S
DODGE CITY
CITIES SERVICE
NORTHERN NATURAL GAS CO
GREENWOOD FIELD
Purchases At Field Average Of 13.43¢ 14.65 PSIA Average 980 BTU Delivered By C.I.G. To N.G.P.L. Co At Hooker
KEYES FIELD
Weighted Average Well-Head 15¢ @ 1000 B.T.U. 12.28¢ 800-825 Average BTU 14.65 PSIA
GREENWOOD FIELD
LIGHT FIELD
P.E.P.L. Co. Purchase At 14¢ On 14.65 PSIA 1000 BTU
LIGHT FIELD
KEYES FIELD
Hooker Delivery Point To N.G.P.L. Co Average B.T.U. 965.
OKLAHOMA-HUGOTON FIELD
Weighted Average Well-Head Residue Price 10.163¢ 14.65 PSIA 950 Average B.T.U.
HUGOTON FIELD
PANHANDLE EASTERN
NATURAL GAS PIPE LINE CO
NORTHERN NATURAL GAS CO
CAMRICK FIELD
CAMRICK FIELD
N.G.P.L. Co. Purchases At 16¢ @ 14.65 PSIA 1000 BTU
HANSFORD FIELD
HANSFORD FIELD
N.G.P.L. Co. Purchases At 15¢ At 14.65 PSIA For 1000 BTU Average BTU 1000+
NEW MEXICO
DALHART
CITIES SERVICE GAS CO
OKLAHOMA
PANHANDLE
FIELD
FRITCH STATION
PROPOSE PIPELINE OF N.G.P.L. CO TO JACK AND WISE CO'S TEX DOCKET G-4280 START PRICE 15¢
AMARILLO
N.G.P.L. Co Buy From Phillips At 14¢ @ 14.65 PSIA Average BTU 1045
TEXAS
FEDERAL POWER COMMISSION
IN THE MATTER OF
DORCHESTER CORPORATION
DOCKET NO. 6505
EXHIBIT NO. ___




NOTE: All Prices Computed At Pressure Base Of 14.65 # sq. in. Absolute Unless Otherwise Indicated

FEDERAL POWER COMMISSION
IN THE MATTER OF
DORCHESTER CORPORATION

DOCKET NO. 6505
EXHIBIT NO. ____




INFORMATION ON GAS DELIVERIES AND PRICES

Hugoton-Guymon Area

(1) Dorchester Corporation delivers residue to Natural Gas Pipeline Company of America. Gas is dehydrated and made suitable for pipeline transmission. It is invoiced to Natural on the basis of Oklahoma price order of 9.32o2¢ per MCF of minimum 950 BTU gas at 14.65#. On deliveries since July 1 Natural has tendered payment of only 7¢ per MCF at 10.4# adjusted to 965 BTU.

(2) Hugoton Plains Oil & Gas Company delivers residue to Northern Natural Gas Company at field pressure. Original contract provided payment of 10.5¢ per MCF at 10.4# for 950 BTU gas. Natural is currently tendering payment at 9.52o2¢ on 14.65# basis.

(3) Republic Natural Gas Company sells wellhead gas to Cities Service Gas Company in this area. Price currently paid is 11¢ per MCF at 14.65#.

(4) Cities Service Gas in this area going into its own system is settled for on the basis of 10¢ per MCF at 14.65#.

(5) Skelly Oil Company's wellhead production is delivered to Cities Service system for 11¢ per MCF at 14.65#.

(6) Cabot Carbon Company sells some gas to Cities Service Gas Company at their going field price and the balance to Northern Natural Gas Company for 15¢ per MCF at 14.65#.

(7) American Gas Company (Cities Service Oil Co.) wellhead production sold to Northern Natural for 15¢ per MCF at 14.65#.

(8) Keyes Area. Various producers in this area sell their gas on wellhead basis into Colorado Interstate Gas Company's Denver system for 1o¢ per MCF at 14.65# of 1,000 BTU gas. Actually, as produced this gas averages 800 BTU and the payment to producer is accordingly about 12¢ per MCF of field gas.

(9) Greenwood Area. This is relatively new production which Colorado Interstate Gas Company sells to Natural Gas Pipeline Company at 15¢ per MCF on 14.65# basis. This gas is delivered to Natural Gas Pipeline's compressor station at Hooker.

(10) Dorchester Corporation sells its production in this area at the wellhead to Panhandle Eastern Pipeline Company for 11¢ per MCF at 14.65#. This is the Kansas price order minimum.

(11) This is new production developed by R. H. Fulton in Hansford County, Texas some 10 miles south of location shown in margin on map. Wellhead gas without dehydration or other preparation for transmission is sold to Natural Gas Pipeline Company for 15-1.2¢ per MCF at 14.65#. Contract provides that price shall escalade 1¢ per MCF each five (5) years.

Office - Supreme Court, U.S.
FILED
MAY 14 1958
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

NO. 1003

DORCHESTER CORPORATION,

*Petitioner,*

v.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
FEDERAL POWER COMMISSION,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

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No. .....

---

DORCHESTER CORPORATION,

*Petitioner,*

v.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
FEDERAL POWER COMMISSION,

*Respondents.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

---

Dorchester Corporation ("Petitioner") prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled cause on February 26, 1958.

## OPINIONS BELOW

The opinion and judgment for the Court of Appeals for the Third Circuit of February 26, 1958, is not yet reported, but is printed as Appendix "A" hereto, *infra* pp. 18-31. The orders of the Federal Power Commission which formed the basis for this action are printed in chronological order in Appendix "B" hereto, *infra* pp. 32-42.

## JURISDICTION

The judgment of the Court of Appeals was entered on February 26, 1958. A Petition for Rehearing was filed by Petitioner on March 28, 1958, and was denied on April 10, 1958. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

## QUESTIONS PRESENTED

1. Whether the Oklahoma minimum price law constituted a valid exercise of state regulatory power over matters of local concern prior to the time that the paramount federal authority was implemented by the Federal Power Commission in its Series 174 orders[1] issued during the summer and fall of 1954.

2. Whether the Court of Appeals in modifying the order of the Federal Power Commission exceeded its judicial function and invaded the administrative province.

## STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act, 52 Stat. 821, 15 U.S.C. 717, et seq., are set out in Appendix "C" hereto, *infra* pp. 43-48.

## STATEMENT OF THE CASE

Respondent, Natural Gas Pipeline Company of America ("Natural"), entered into a contract with Harrington & Marsh, a partnership, effective December 1, 1946, for the purchase and sale of gas from the Guymon-Hugoton Field in Texas County, Oklahoma (R. 1006). The contract pro-

[1] Order No. 174 was issued July 16, 1954; Order No. 174-A was issued August 6, 1954, and Order No. 174-B was issued December 17, 1954.

vided for a sale of 84,000,000 cubic feet of gas per day (pressure base of 14.65 psia) until January 1, 1965, and thereafter until cancelled by Natural. Furthermore, this agreement expressly provided that it was subject to and modified by future valid regulatory orders.[2] On October 1, 1948, Panoma Corporation succeeded to the interest of Harrington & Marsh under the contract. On July 29, 1952, the Oklahoma Corporation Commission fixed a minimum price of 9.8262 cents per Mcf for all gas removed from the Guymon-Hugoton Field (Order 26096). Natural commenced to pay in accordance with this minimum price order but initiated an appeal therefrom.

Pending appeal, on July 1, 1954, Petitioner acquired certain rights in the properties formerly held by Panoma Corporation and in the gas purchase contract (R. 453-455). By means of a complex financial transaction, Petitioner became the nominal party seller under the gas purchase contract, but was in reality the owner of and entitled to receive only 3½ per cent of the proceeds of the payments made for the gas and the 45 per cent interest in the liquids attributable to the leasehold estate after all royalties, overriding royalties and other payments to which the leaseholds were subject were made. Natural, as purchaser of the gas, assented to the transaction and was supplied with copies of all the documents pertaining thereto prior to

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[2] Article Fourteenth in full reads:

"Contract Subject to Laws and Regulations.

"This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation."

effectuation thereof on July 1, 1954 (R. 239). At the time of closing, on July 1, 1954, and on June 7, 1954, Natural was invoicing and paying for the gas sold and delivered to it by Panoma at a price of 9.8262 cents (R. 329-338-759).

By the terms of order No. 174 (as superseded by order No. 174-A and No. 174-B) independent producers were required to file on or before December 1, 1954, rate schedules, as defined in Section 154.93 of the Commission's regulations under the Natural Gas Act, setting forth the terms and conditions of service and all rates and charges for such transportation or sale *effective June 7, 1954.* Since Petitioner was the nominal party seller under the gas purchase contract, it filed with the Commission the contract and all amendments and supplements thereto, including the Oklahoma minimum price Order 26096 that became effective August 1, 1952, and which was in full force and effect on June 7, 1954 (R. 185-186).

On December 30, 1954, the Commission issued its order allowing Petitioner's filed rate of 9.8262 cents to become effective (R. 1091). Natural commenced making payments at the rate of 9.8262 cents. By allowing Petitioner to file the Oklahom minimum price as the rate legally in effect on June 7, 1954, the Commission simply followed the policy it had established in regard to all other sellers of gas in the Guymon-Hugoton Field, as it had uniformly allowed the rate of 9.8262 cents to be filed by such sellers where it was higher than the contract price (R. 22-23, 572-573, 604, 631).

In *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U.S. 44 (April 11, 1955), this Court held the Oklahoma minimum price law invalid because it conflicted with the paramount federal jurisdiction as initially implemented by the Commission in its Order No. 174 issued July 16, 1954. However,

this Court made no determination as to *when* such order became invalid. Thereafter, on November 14, 1955, the Commission found that the 9.8262-cent rate was the one effective and applicable under the contract *on June 7, 1954.* This decision was reaffirmed in its orders of January 5, 1956, February 3, 1956, and February 24, 1956.

Natural initiated this appeal to the United States Court of Appeals for the Third Circuit, claiming that the Oklahoma minimum price law fixing the 9.8262-cent rate was invalid on June 7, 1954, and that therefore the Commission's action in approving such price permitted Petitioner to obtain a higher rate through a unilateral filing, contrary to the decision of this Court in the *Mobile* case.[3]

On February 26, 1958, the Court of Appeals held that the lawful contract rate on file June 7, 1954, was 6.253 cents per mcf and that therefore the Commission's order of January 5, 1956, should be modified to provide that effective as of that date the rate of 6.253 cents per mcf be reinstated for the period prior to March 1, 1955, and that paragraph (D) of said order be modified to direct Petitioner to refund to Natural the difference between 10 cents per mcf and 6.253 cents per mcf for the period from March 1, 1955, to January 5, 1956. The court further set aside the order of the Commission of February 24, 1956. On April 10, 1958, the Court of Appeals overruled Petitioner's Petition for Rehearing.

## REASONS FOR GRANTING THE WRIT

A. This request for review presents important federal questions which are derived from the complex administrative problems surrounding the regulation of independent producers of natural gas by the Federal Power Commission.

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[3] *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

The determination of these questions not only vitally affects Petitioner and its ability to render service to Natural, but likewise affects all other sellers of gas in Oklahoma and Kansas who received payments in excess of their contract prices pursuant to the minimum price laws promulgated by the regulatory agencies of those states. Such payments were received with the assurance of this Court in *Cities Serv. Gas Co.* v. *Peerless O. & G. Co.*, 340 U.S. 175 (1950), that minimum price laws were a proper exercise of state regulatory power.

When the regulation of independent producers was thrust upon the Commission by the decision of this Court in *Phillips*,[4] the treatment of the state minimum price laws, which were admittedly passed in the aid of conservation and to prevent waste,[5] was just one of the many vexing problems presented to the Commission. Therefore, the Commission resolved that until further study and consideration, it would attempt to preserve the status quo of all prices being paid on June 7, 1954, and accordingly required independent producers to file the prices which they were receiving on that date. Petitioner filed the 9.8262¢ rate which it was receiving pursuant to the Oklahoma minimum price law. The Commission accepted this filing and like filings made by producers whose rates were subject to the Oklahoma and Kansas minimum price orders.

On appeal, the court below determined that the Oklahoma minimum price law was invalid on that date and ordered the 6.253¢ rate to be reinstated. The Court of Appeals relied upon the decision of this Court in *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U.S. 44 (April 11, 1955), wherein it was held that the Oklahoma minimum price law was invalid

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[4] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

[5] *Cities Serv. Gas Co.* v. *Peerless O. & G. Co., supra; Phillips Petroleum Co.* v. *Oklahoma*, 340 U.S. 190 (1950).

because it conflicted with the paramount federal authority as implemented by Order No. 174 issued by the Federal Power Commission on July 16, 1954. This was an erroneous interpretation of the *Panoma* case, for in that decision there was no determination as to *when* such state minimum price regulation became invalid. Therefore, this Court is now confronted with the issue of whether state minimum price laws were invalid during the period prior to the regulation of rates of independent producers by the Federal Power Commission, i.e., prior to July 16, 1954, when the federal jurisdiction was first implemented by Order No. 174. As recognized by the court below in the initial sentence in its opinion, "the dispositive question here is what was the lawful contract rate on June 7, 1954," for gas sold by Petitioner to Natural? The answer to this question is dependent upon a determination of whether Congress intended to preclude such state action by the mere enactment of the Natural Gas Act, and thereby create a hiatus until the Commission acted, or whether the existing state power was to remain unimpaired until the Commission implemented its jurisdiction. This is an important federal question with industry-wide consequences which urgently calls for determination by this Court at this time.

The administrative problems that are faced by the Commission as a result of the decisions by this Court without further clarification thereof, are well evidenced by the "Notice of Proposed Rule Making" issued by the Commission on April 28, 1958, in Docket No. R-168. A copy of such notice is attached hereto as Appendix "D". In its notice, the Commission states as follows:

> "Among those questions which the Commission is considering in this connection which appear to be raised by the decisions of the Supreme Court referred to, are:

stand together. *Kelly* v. *Washington*, 302 U.S. 1 (1937) and cases cited therein. Here, Section 16 of the Natural Gas Act grants the Federal Power Commission the power to issue, make, amend and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of the Act, and further specifically provide that:

> "Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after the publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe."

And, as evidenced by many decisions of this Court, the fundamental congressional purpose underlying the Natural Gas Act was to complement and supplement, insofar as possible, the existing state jurisdiction over matters of local concern. *Public Utilities Com.* v. *United Fuel Gas Co.*, 317 U.S. 456 (1943); *Federal Power Com.* v. *Hope Nat. Gas Co.*, 320 U.S. 591 (1944); *Panhandle E. Pipeline Co.* v. *Public Serv. Com.*, 332 U.S. 507 (1947). When this underlying purpose is considered in conjunction with Section 16 of the Act, it shows that Congress did not intend to supersede or preclude state regulation over matters of local concern, such as the Oklahoma minimum price laws until the paramount federal authority over such matters have been exercised by the Commission.

By its own rules, the Commission's orders did not become effective until the date prescribed therein. The Commission first implemented its jurisdiction by the issuance of Order No. 174 on July 16, 1954. Prior to that time the Oklahoma minimum price laws constituted valid state regulations, and therefore, on June 7, 1954, the Oklahoma minimum price

law was a valid and subsisting state regulation which, by the terms of the contract between Petitioner and Natural, modified the contract. Accordingly, the contract rate on that date was 9.8262¢, and the court below erred in overruling the Commission's acceptance of the filing of that rate and in holding that the 6.253¢ rate should be reinstated. Because this error is based upon an erroneous interpretation of a decision of this Court, involves important federal questions and has a widespread effect, it necessitates corrective action by the Court by Writ of Certiorari. See 11 Oklahoma Law Review 65.

## POINT II.

## THE COURT OF APPEALS HAS EXCEEDED ITS JUDICIAL FUNCTION AND INVADED THE ADMINISTRATIVE PROVINCE.

### 1. The Court Below Exhausted Its Power of Review When It Held that 6.253¢ Per Mcf Was the Lawful Rate on File on June 7, 1954, and Its Further Orders Are Invalid.

In its opinion and judgment entered in conformity therewith, the Court of Appeals found not only that the Commission was in error in holding that the legally effective rate on June 7, 1954, was 9.8262¢ per Mcf instead of 6.253¢ per Mcf, but dictated subsequent Commission action be taken with respect thereto. This the court below was without authority to do.

The Court of Appeals laid bare the error of the Commission when it held that 6.253¢ was the rate in effect under the contract on June 7, 1954. Having done this, it exhausted its power under the statute and could go no farther. This Court has firmly established that the function of a court reviewing administrative action terminates when an error of law is laid bare, and at that point the matter should be

remanded for reconsideration by the administrative body unless its determination is final in itself. *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17 (1952); *Federal Trade Comm.* v. *Morton Salt Co.*, 334 U.S. 37 (1948); *Federal C. C.* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); *Sunray Mid-Continent Oil Company* v. *F. P. C.*, 353 U.S. 944 (1957). In the *Sunray* case, this Court said:

> "The power of the Court of Appeals in reviewing the order of the Federal Power Commission was exhausted when it held that the Commission had authority under Section 7(c) and (e) of the Natural Gas Act to issue certificates of public convenience and necessity of limited duration. *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U.S. 80."

In its judgment entered herein on February 26, 1958, the Court of Appeals modified the Commission's order of January 5, 1956, stating *inter alia:*

> " . . . paragraph (d) of said order be, and it is hereby modified so as to direct that the refund to be made by Dorchester to petitioner pursuant thereto be computed on the basis of the difference between ten cents per Mcf and 6.253 cents per Mcf for the period from March 1, 1955, to January 5, 1956 . . . "

The action of the court below in refusing to remand the matter back to the Commission denies the Commission the opportunity of determining whether or not the contract rate (6.253¢) was so low as to have an adverse effect on the public interest. Such a determination is purely a question for the Commission. See *Federal Power Com.* v. *Sierra P. P. Co.*, 350 U.S. 348, 356 (1956). Furthermore, the effect of the Court's order is to determine the manner and method of refund without giving the Commission an opportunity to determine how such refund might be made as being

required in the public interest To require an immediate refund of the total amount received would bankrupt Petitioner. Obviously, such a result is not in the public interest. The method and manner of refund involve questions requiring the expert competence of the Federal Power Commission to work out an adequate procedure which will protect the public interest. Failure to remand this case to the Commission for further action was erroneous and directly in conflict with the decisions of this Court, and requires correction by this Court by Writ of Certiorari.

## CONCLUSION

This case involves important federal questions which concern the effect of the Natural Gas Act, and the administrative application thereof; its legal and financial consequences are far-reaching; the Court of Appeals has erroneously interpreted a decision of this Court and this error has resulted in a judgment in conflict with other decisions of this Court. Therefore, for these reasons, it is in the ultimate public interest to grant this Petition for Writ of Certiorari.

Respectfully submitted,

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## APPENDIX "A"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

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No. 11,862

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NATURAL GAS PIPELINE COMPANY OF AMERICA,
*Petitioner*

v.

FEDERAL POWER COMMISSION,
*Respondent*

DORCHESTER CORPORATION,
*Intervenor*

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ON PETITION TO REVIEW ORDERS OF THE FEDERAL POWER COMMISSION

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Argued December 2, 1957
Before McLAUGHLIN, KALODNER and STALEY, *Circuit Judges.*

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## OPINION OF THE COURT

(Filed February 26, 1958)

By McLAUGHLIN, *Circuit Judge.*

The dispositive question here is, what was the lawful contract rate on June 7, 1954 for gas sold by intervenor, Dorchester Corporation to petitioner?

Dorchester is an independent producer of natural gas in Oklahoma. It is the immediate successor of Panoma Corporation which had originally succeeded the partnership of Harrington and Marsh as such producer.[1] Natural, the petitioner, on December 1, 1946, contracted with the partnership for the purchase of natural gas from the Guymon-Hugoton field in Oklahoma. The contract ran expressly until January 1, 1965 and at buyer's option as long thereafter as sellers are able to deliver gas in paying quantities from reserves allocated to the agreement. The price of 5.12¢ per Mcf (14.65 psia) increased to 6.253¢ per Mcf on July 1, 1951 until July 1, 1956 and thereafter was fixed at 7.145¢ per Mcf.

By its article Fourteenth the agreement is " • • • subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties • • •."[2] On July 29,

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[1] At the time when Panoma was in process of disposing of its leasehold interests to Dorchester, Natural was requested to consent to the transfer. It did so upon the clear understanding that:

"It is expressly stipulated, moreover, that such confirmation by Natural shall not impair any rights which Natural may have against any person, firm or corporation to recover the difference between the contract price and the price actually paid by Natural by reason of minimum price orders for gas delivered under the Gas Purchase Contract by such person, firm or corporation."

[2] Article Fourteenth in full reads:

"Contract Subject to Laws and Regulations.

"This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation."

1952 the order of the Oklahoma Corporation Commission fixed 9.8262¢ per Mcf (14.65 psia) as the minimum price for which gas produced in the Guymon-Hugoton field may be first purchased or sold. Natural advised Panoma, which had by then succeeded the partnership, that the Oklahoma Commission order did not apply to gas purchased by Natural under the December 1, 1946 contract, as amended. It stated that it was appealing from the order and that, pending final adjudication of its validity as to the contract gas, it would under protest pay in accordance with the state commission order and "In the event such order shall be held invalid or inapplicable to the gas sold and delivered by you to us under such contract, Natural will assert the right under familiar doctrines of business compulsion, unjust enrichment and restitution to a return to Natural of the additional payments so made under protest, with lawful interest thereon."

On Natural's appeal the Oklahoma Supreme Court on April 27, 1954, affirmed the state commission's order. An appeal was taken to the United States Supreme Court. On June 7, 1954, the litigation took on a new complexion, for it was on that date that the United States Supreme Court, independent of the foregoing, announced its opinion in Phillips Petroleum v. Wisconsin, 347 U.S. 672 (1954). The effect of that decision was to render Dorchester, as a producer of natural gas, subject to regulation by the Federal Power Commission under the Natural Gas Act. Formerly producers such as Dorchester, not engaged in interstate transport of natural gas, had regarded themselves as exempt from such regulation. The Commission subsequently issued orders[7] providing the mechanics for bringing independent producers under the Commission's supervision. Dorchester was thereby required to file "rate schedules, as defined in §154.93, setting forth the terms and conditions

of service and all rates and charges for such transportation or sale effective on June 7, 1954." Rate schedules were defined in §154.93 as meaning "• • • the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954, showing the service to be provided and the rates and charges, terms, conditions • • •" etc.

On July 1, 1954 Dorchester had succeeded Panoma.[4] On October 28, 1954 it tendered to the Commission for filing, the contract with Natural plus three supplements. Two of these were bona fide amendments to the contract and of no special importance. The third was a copy of the Oklahoma Corporation Commission's minimum price order, then on appeal to the United States Supreme Court, which Dorchester claimed fixed the actual contract price as of June 7, 1954 at 9.8262¢ per Mcf. Natural protested this to the Commission as illegal and requested that if the Commission did accept the nine cent rate for filing, that is, temporarily, that the payments in excess of the six cent contract rate be held in escrow, to be returned to Natural

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[3] These orders promulgated §§ 154.91, 154.92 and 154.93 of the Commission's Regulations. 19 Federal Register 4554 (1954). These were subsequently modified to an extent not material here. 19 Federal Register 5091, 6301, 8808 (1954).

[4] The arrangements by which this was accomplished are complex. We think it irrelevant to this dispute that the success of these arrangements may to some degree depend on Dorchester's receiving payments at 9.8262¢ per Mcf rather than at the contract rate. Natural, and Natural's customers, are not to be deprived of the benefit of the contract entered into openly and at arm's length because of Dorchester's later unjustified reliance on the validity and permanence of the higher rate which it knew was being appealed, with strong likelihood of success under Phillips Petroleum v. Wisconsin announced three weeks earlier.

1. whether any rate filing predicated solely upon a State minimum price order which has been declared invalid by the United States Supreme Court —

a. must now be regarded as having been invalid from the date of filing; or

b. must now be regarded as having become invalid upon the issuance on January 20, 1958 of the decision of the Supreme Court in *Cities Service Gas Co. v. State Corporation Commission of Kansas*, 355 U.S. 391, or on March 12, 1958, when the mandate of the Supreme Court was issued in that case; or

c. must now be regarded as having become invalid on the happening of some other event; or

d. must be regarded as still effective;

i. by reason of failure of the purchaser thereunder to protest the filing; or

ii. by reason of an agreement, expressed or implied, to pay the filed rate;

iii. by reason of legal estoppel against a protest by a purchaser thereunder; or

iv. for any other reason.

2. whether any of the above questions should be decided by the Commission by means of a general order or decided in individual cases after appropriate proceedings, including hearings; or should be left for decision by an appropriate court in each individual situation;

3. in the absence of reparation power under the Natural Gas Act, whether the Commission can force any purchaser receiving refunds under an invalid rate as herein mentioned to pass such refunds on to its customers, and if not, whether the ultimate consumers would benefit from any refunds retained by the purchaser to whom paid by a producer hereunder."

It is respectfully submitted that the Federal Power Commission cannot answer the foregoing questions without further consideration thereof by this Court. It is further submitted that by granting a writ in this case the Court may resolve these complex administrative problems that now plague a substantial segment of this very important industry.

B. The court below, in reversing the Commission, not only set aside the Commission's order but went further and modified the Commission's order. In so doing, the Court of Appeals exceeded its judicial function and invaded the administrative province. This unauthorized expansion of the judicial power of review conflicts with recent decisions of this Court and accordingly should be corrected by granting this Petition for Writ of Certiorari.

## POINT I.

## THE JUDGMENT OF THE COURT OF APPEALS IS PREDICATED UPON AN ERRONEOUS INTERPRETATION OF THE PANOMA CASE AND RESULTS IN A DECISION WHICH IS IN CONFLICT WITH OTHER DECISIONS OF THIS COURT.

### 1. The Decision of the Court Below Constitutes an Unwarranted Expansion of This Court's Decision in Natural Gas Pipeline Co. v. Panoma Corp., 349 U.S. 44 (April 11, 1955).

In determining that the lawful contract rate on June 7, 1954, for gas sold by Petitioner to Natural was 6.253¢ instead of the 9.8262¢ rate established by the Oklahoma minimum price law, the Court of Appeals assumed that the mere enactment of the Natural Gas Act in 1938 prevented the State of Oklahoma from subsequently regulating the

minimum price for gas taken from the Guymon-Hugoton Field despite the fact that the federal authority lay "dormant and unexercised prior to July 16, 1954." Inherent in this assumption is a limitation upon the power of a state to enter an order concededly necessary in the interest of conservation, prevention of waste and protection of correlative rights in a natural gas reservoir, even though the Federal Power Commission had made no attempt to regulate these matters. The court below based its assumption upon the decision of this Court in *Panoma*,[6] and erroneously relied upon that decision as determining that the Oklahoma minimum price law was invalid from its inception. This was an unwarranted expansion of the *Panoma* case. In *Panoma*, this Court did not say *when* the Oklahoma minimum price order became invalid; it simply determined that the minimum price law conflicted with the paramount federal jurisdiction over rates for natural gas which had been implemented by the Series 174 orders issued by the Federal Power Commission. There was no attempt to determine the retroactive invalidity of the Oklahoma minimum price law, and, indeed, that issue was not before the Court for decision, and was not urged in the arguments or briefs presented to the Court. It was mentioned by Mr. Justice Douglas in his dissent, but there is nothing in the briefs or record to show that this point was passed upon by the Court.

This Court has a long standing rule that it will not pass upon questions which are not presented in the proceeding which is before the Court. This was clearly illustrated by this Court's action in *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U.S. 175 (1950), where the Court refused to consider the effect of the Natural Gas Act on state mini-

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[6] Cited by the court below as *Natural Gas Pipeline Company of America* v. *Corporation Commission of the State of Oklahoma*, 349 U.S. 44 (1955), but for convenience hereinafter referred to as "Panoma."

mum price regulation. In fact, recently, this Court has stated that such issues are not to be entertained upon dubious presentations, and most certainly not when the presentation reasonably may be taken as not intended to put them forward squarely and inescapably. See *Aircraft & D. Equipment Corp.* v. *Hirsch*, 331 U.S. 752, 763 (1947).

The question of when the Oklahoma minimum price law became invalid was not material to the decision in the *Panoma* case and any mention thereof would have been *obiter dictum*. The sole question before the Court was whether the Oklahoma minimum price law could stand in face of the regulations which had been promulgated by the Federal Power Commission. This Court expressly stated that the result reached was controlled by the *Phillips* case in which the validity of prior state regulations was not discussed. An examination of both the *Panoma* and *Phillips* cases shows that they are readily distinguishable on the facts and issues presented and are not determinative of the question which is raised herein.

The composite effect of the *Panoma* decision was to vitiate the Oklahoma minimum price law, because federal jurisdiction had been implemented by the Series 174 orders promulgated by the Federal Power Commission during the summer and fall of 1954, and thus, *at that time*, the theretofore valid state regulations were superseded. It is therefore clear that the court below misread *Panoma* when it stated that "there was no longer even the semblance of a valid law, or lawful order which could modify the contract rate." The decision of the Court of Appeals places an erroneous construction upon the *Panoma* case, and as set out below, has resulted in a decision which conflicts with the decisions of this Court.

**2. The Decision of the Court of Appeals Conflicts with the Decisions of This Court Which Sustain the Validity of State Regulatory Action "Where Federal Power Has Been Delegated But Lies Dormant and Unexercised."**

The assumption by the court below that the mere existence of the Natural Gas Act made the Oklahoma minimum price order void *ab initio*, disregards and ignores the decisions of this Court which firmly establish that merely because Congress has vested regulatory power in a federal agency, that does not of itself displace state regulations if no federal standards are set. *H. P. Welch* Co. v. *New Hampshire*, 306 U.S. 79 (1939); *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761 (1945); *Terminal R. Assoc.* v. *Brotherhood of Trainmen*, 318 U.S. 1 (1943); *Northwestern B. T. Co.* v. *Nebraska State R. Co.*, 297 U.S. 471 (1936); *Missouri P. R. Co.* v. *Larabee Flour Mills Co.*, 211 U.S. 612 (1909). This fundamental principle underlying the demarcation between federal and state authority was cogently summarized in *Missouri P. R. Co.* v. *Larabee Flour Mills Co., supra*, where the Court stated:

> "On the other hand, it is said that Congress has already acted — has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has entrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. * * * In other words, the mere grant by Congress to the commission of certain national powers in respect to interstate commerce does not of itself, and in the absence of action by the commission, interfere with the authority of the state to make those regulations conducive to the welfare and convenience of its citizens."

The guiding principles for determining whether federal regulation supersedes state regulation were clearly stated

by this Court in *Bethlehem Steel Co.* v. *New York Labor Rel. Bd.*, 330 U.S. 767 (1947). Ultimately, in each case, the effect of federal legislation on state regulation is a matter of congressional intent as derived from the statute itself, its primary purpose and the judicial construction that has been placed thereon. *Guss* v. *Utah L. R. B.*, 351 U.S. 1 (1957). In the *Guss* case, this Court was confronted with a problem very similar to the one which is presented here, and in determining that Congress preempted the field by merely enacting the National Labor Relations Act, the Court made the following statement:

> "'Our reading of Section 10(a) forecloses the argument based upon such cases as *H. P. Welch Co.* v. *New Hampshire*, 306 U.S. 79, 83 L. Ed. 500, 59 S. Ct. 438, and *Missouri P. R. Co.* v. *Larabee Flour Mills Co.*, 211 U.S. 612, 53 L. Ed. 352, 29 S. Ct. 214, that 'where federal power has been delegated but lies dormant and unexercised,' *Bethlehem Steel Co.* v. *New York State Labor Relations Board, supra,* (330 U.S. at 775), the states' power to act with respect to matters of local concern is not necessarily superseded. *But in each case the question is one of congressional intent.* Compare *H. P. Welch Co.* v. *New Hampshire (U.S.), supra,* with *Napier* v. *Atlantic Coastline R. Co.*, 272 U.S. 604, 71 L. Ed. 432, 47 S. Ct. 207.' (Emphasis supplied.)"

Therefore, the crucial inquiry in this proceeding, and one which the court below failed to determine because of its erroneous interpretation of the *Panoma* case, is whether, by the enactment of the Natural Gas Act, Congress intended to curtail state power prior to the implementation of the paramount federal authority provided therein.

The principle is thoroughly established that state police power, otherwise valid, is superseded by federal action only where the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently

The contract rate could only be changed, then, (unless the parties consented) after a hearing by the Commission as to its lawfulness unless, as set out in the agreement itself, a valid law and lawful orders of regulatory bodies having jurisdiction over the parties affected it. It was expressly because of these elements that Natural, after the Oklahoma Commission had established a minimum rate and while its lawfulness was being litigated, paid the state-fixed purchase price under protest. When the United States Supreme Court found Oklahoma's action to have been unlawful and set the state commission order aside, there was no longer even the semblance of a valid law, or lawful order which could modify the contract rate. The contract rate, therefore, under the mandate of the Supreme Court must be held to have been the rate effective on June 7, 1954.

The Commission concedes in its brief on the question whether Dorchester's effective rate on June 7, 1954 was 9.8262¢ or 6.253¢ "that forceful arguments can be made in support of either rate." The Intervenor admits, as it must, that Mobile prevents "the filing of an increase in the contract rate by unilateral action". However, it insists that because the Oklahoma order had not yet been found unlawful on June 7, 1954, the rate established by that order became the effectively filed rate for all purposes despite the fact that Natural then, and unceasingly from then on, denied Oklahoma's jurisdiction and expeditiously brought the issue to the United States Supreme Court where its position was completely vindicated. The Commission itself had specifically recognized the situation for what it was. It had accepted the filing by Dorchester of the Oklahoma price, contingent upon the eventual decision of the Supreme Court as to just what was the effective lawful rate for the purchase and sale of gas be-

tween Natural and Dorchester on June 7, 1954. That has now been determined. No amount of facile argument can hide the fact that the contract rate was the effective lawful rate and must be so accepted by the Commission and Dorchester.

The suggestion of the Commission and intervenor that this point was not made before the Commission in the applications for rehearing as called for by Section 19(b) of the Act, is frivolous. Natural throughout this labyrinthian process had urged to the Commission that its contract rate could not be destroyed unilaterally. This was squarely within the record and was a most important part of Natural's objection to the increase from the time Dorchester filed the Oklahoma Commission order to its objection to the Commission allowing the filing of December 27, 1955 to become effective. It was an express ground upon which the petition for rehearing of the January 5, 1956 order was based. The language of the Supreme Court in its Mobile opinion could hardly have been quoted in any of those objections as the opinion was not filed until February 27, 1956. But the rationale of the Mobile holding was present in all of Natural's protests. The Commission and Dorchester had full notice from the time the Oklahoma rate was filed by the intervenor of the claim by petitioner that such move was illegal and would be contested. The Commission's order of November 30, 1954, above referred to, accepting for filing the state commission price order reveals total knowledge of the circumstances. It said in that order:

> *"In view of the foregoing, it appears to the Commission that the question of whether the price of 9.862c per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether*

*the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme court of the United States in Cause No. 321, October Term 1954 for decision.*

*"To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."* (Emphasis supplied.)

Much the same so-called technical objection is argued by the Commission with respect to petitioner's attack on the Commission's action of February 24, 1956. The petitioner, says the Commission, failed to file application for rehearing under Section 19(a). As has been noted in the statement above, it was the Commission which deliberately and authoritatively designated petitioner's protest telegram of February 8, 1956 as its application for rehearing and accepted it as such. The telegram plainly put the Commission on adequate notice of petitioner's objections. Amazing as this litigation was in its development, petitioner can hardly be held for a failure to anticipate a trap. It had the right to rely on the Commission's February 24th designation of its earlier letter protest as an application for rehearing, high-handed though that designation may have been. At this stage the Commission cannot in good faith strive to construe § 19(a) as requiring a petition for rehearing of a summary denial of a rehearing. Review would never become available to an aggrieved party by that line of reasoning.

The Commission also contends that petitioner was not aggrieved by its February 24th order. The Commission

says the 9.8262¢ rate that it permitted to be filed by its letter authorization and which it confirmed by the order of February 24th effected no change in the rate it had allowed on January 5, 1956. Consequently, the Commission now argues, it had no power under the Act to sanction that move, whatever the purpose of the move may have been. But obviously if the January 5th order were reversed, it could and probably would be claimed that the February approval established a sound nine cent rate from January 27, 1956 when the thirty day notice time elapsed. In this light the aggrievement to petitioner by the Commission's acceptance of the filing cannot reasonably be denied. And the voiding of that step is not to be defeated by the hint that the Commission decision in the form of a letter does not meet with the requirements of Section 19(b) as to that body's method of decision. What we have is the considered Commission final judgment on Dorchester's December 28th filing. The Commission emphatically reiterated that view when it accepted petitioner's telegram as an application for rehearing of its decision, directly under Section 19(a). For the third time it solemnly attested to this when it made its order denying the rehearing application. We are wholly satisfied that the form of the decision of the Commission is well within Section 19(b).

By its order of November 14, 1955 the Commission reversed the holding of its Presiding Examiner and reduced Dorchester's bond from $742,000 to $41,000. As we have seen, petitioner was entitled to protection on the difference between the six cent rate and the Oklahoma nine cent price. The $742,000 was designed to furnish this. The declared purpose of the $41,000 bond was to safeguard petitioner should the rate be ultimately determined as 9.8262¢ instead of ten cents. The reversal of the finding of the Presiding

Examiner was erroneous but since we are now holding that the proper rate on June 7, 1954 was 6.253¢ there is no need of ordering a replacement bond in some adequate sum.

Finally, respondent and intervenor by motion to dismiss and on the merits maintain that petitioner is not aggrieved by any of the Commission orders involved.

We have dealt with the order of February 24, 1956 immediately above. Other than it, the argument seems to be that because the advance in the price to Natural has been reflected in the price to its customers, Natural has not been aggrieved.[8]

This proposition is at the least, unrealistic. Natural is entitled to deal with its customers ethically and, engaged in a fiercely competitively business as it is, must do so in order to survive. It could not stand by and suffer an unlawful fifty-seven per cent increase to be loaded on its purchasers. There is no indication that the latter are captive buyers or that they would submit to that sort of treatment. So it has been not only high level business but sound business for Natural to contest the issue. All in all Natural is truly an aggrieved person within § 19(b) of the Act.

The motion to dismiss is denied.

Since our basic conclusion is that the lawful contract rate on file June 7, 1954 was 6.253¢ per Mcf:

The Commission's order of January 5, 1956 is modified so as to provide that effective as of the date thereof, the rate of 6.253¢ per Mcf be reinstated as the effective rate

[8] Natural is committed formally to the Commission to refund to its customers in turn any refunds it collects from Dorchester. Natural's distributor customers in turn have agreed with the Illinois Commission to pass the refunds along to its customers, the ultimate consumers.

for the period prior to March 1, 1955. Paragraph (D) of said order is modified so as to direct that the refund to be made by Dorchester to petitioner pursuant thereto be computed on the basis of the difference between 10¢ per Mcf and 6.253¢ per Mcf for the period from March 1, 1955 to January 5, 1956.

The order of February 24, 1956 is set aside and the Commission is directed to rescind its action as reported in its notice of February 3, 1956 and to reject the filing tendered by Dorchester on December 27, 1955 and to strike Supplement #6 from its files.

In accordance with the present position of petitioner in respect to the arrangements as to its payments in excess of the contract price since January 5, 1956, we are making no specific order concerning those payments.

A true Copy:

Teste:

*Clerk of the United States Court of Appeals for the Third Circuit.*

## APPENDIX "B"

[1401]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William B. Connole

In the Matter of Dorchester Corporation } Docket No. G-6505

### Order Reversing Initial Decision of Presiding Examiner

On September 14, 1955, the Presiding Examiner issued his initial decision, setting forth his findings, conclusions and decision on the determination of the amount of the surety bond which Dorchester Corporation (Dorchester) should be required to furnish in connection with its proposed rate changes which it sought to place into effect under bond. In reaching his conclusion as to the amount of the bond, the Presiding Examiner found and concluded on the basis of the record adduced that Dorchester's effective rate as of June 7, 1954, under Dorchester's Rate Schedule FPC No. 2, was 6.253 cents per Mcf (at 14.65 psia), and that the annual differential between revenues at 6.253 cents and the proposed 10c rate for the 12-month period following March 1, 1955 (the date on which the proposed 10c rate was permitted to become effective) would amount to approximately $742,000.

On October 4, 1955, Dorchester filed exceptions to said initial decision.

In our order of November 30, 1954, we, in an effort to avoid taking any steps which would affect either party's rights or status in their pending litigation concerning the validity of the Oklahoma minimum price orders, stated that:

> "In view of the foregoing, it appears to the Commission that the question of whether the price of 9.8262¢ per Mcf at 14.65 psia is the effective price as of June 7, 1954, for the sale of gas by Dorchester to Natural, as claimed by the former, is dependent upon whether the aforesaid Order No. 26096 of the Corporation Commission of the State of Oklahoma is valid as to such sale. That question is presently before the Supreme Court of the United States in Cause No. 321, October Term 1954 for decision.
>
> "To protect the respective rights of both Dorchester and Natural, it is appropriate to carry out the provisions of the Natural Gas Act that we permit the filing by Dorchester of the tenders of October 28, 1954, subject to the express understanding and condition that such filing is proper only if Order No. 26096 is valid as to the sale by Dorchester to Natural covered by the filings, but not otherwise."

[1402]

It is now clear that the precautions which we attempted to take were improper and of no avail. There can be only one filed rate under which a particular sale may be made. The rate which was filed was the 9.8262¢ rate which was the rate which actually was effective and was being paid by Natural to Dorchester's predecessor on June 7, 1954. Therefore, this filing complied with our Order 174-A. *See In the Matter of Cities Service Producing Company*, G-5788.

A policy of accepting rate filings tentatively, subject to later and final acceptance of the rate we found to be the

in the event the state minimum rate was finally declared illegal by the Supreme Court. On November 30, 1954 the Commission accepted for filing Dorchester's tender, on the condition that the 9.8262¢ per Mcf minimum price be upheld by the United States Supreme Court. Thereafter Natural paid for its gas at that rate reserving the right to recover the excess if it were found to be unlawful.[5]

On December 6, 1954, Dorchester presented for filing its Supplement #4 which called for a rate of 10¢ per Mcf under the contract. The Commission suspended this proposed change until March 1, 1955, and called for a hearing as to its lawfulness. On April 7, 1955, four days before the Supreme Court filed its opinion invalidating the state-fixed rate, on Dorchester's motion, the Commission by order permitted the ten cent rate to become effective as of March 1, 1955. This was subject to further order of the Commission after the above referred to hearing and contingent upon Dorchester posting a $41,000 bond covering refund of any portion of the increase eliminated by the Commission as a result of the hearing. Because the required bond merely took care of any difference between the Oklahoma Commission minimum of 9.8262¢ and the sought for ten cent figure, Natural asked that the Commission reconsider the amount of the bond and that it be made sufficient to protect the difference between the contract 6.253¢ and the ten cents allowed Dorchester. It was about this time that the Supreme Court on April 11, 1955, holding Phillips Petroleum Co. v. Wisconsin to be controlling, ruled the 9.8262¢ rate invalid as having been imposed beyond the power of the State. Natural Gas Pipeline Com-

[5] Natural has presently a suit in the Delaware Federal District Court to obtain refund of its excess payments from July 1, 1954 to March 1, 1955.

pany of America v. Corporation Commission of the State of Oklahoma, 349 U.S. 44 (1955).[6] Thereafter a hearing was held on Natural's protest at the inadequacy of the bond to be required of Dorchester pending the Commission's determination of entitlement to the 10¢ rate. On September 14, 1955 the Presiding Examiner of the Commission sustained the protest and ordered a bond in the sum of $742,000. On November 14, 1955 while the uncompleted hearing on the lawfulness of the ten cent rate was in recess, the Commission reversed its Presiding Examiner and reinstated the $41,000 bond. It did so simply by stating that the 9.8262¢ rate was the one actually effective and being paid on June 7, 1954. The facts that it was under protest, that a lesser amount was paid for a short time thereafter, or that the rate was subsequently declared invalid were, according to the Commission, irrelevant to the determination of the effective rate on June 7, 1954. The Commission in fact rejected its earlier conditional acceptance of the 9.8262¢ rate as having been a condition improvidently granted. Thereafter, in view of this, when the ten cent rate hearing was resumed Dorchester withdrew its filing of that rate. It was agreed by everyone that all the evidence as to that question had been offered and that the record was closed. The intermediate decision was omitted on motion and the record certified to the Commission. The latter, on January 5, 1956, dismissed the ten cent rate and reinstated the 9.8262¢ rate, relying apparently on the November 14th order which had found that to be the effective rate on June 7, 1954. Dorchester was ordered

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[6] See Michigan Wisconsin Pipe Line Co. v. Corporation Commission of Oklahoma, U.S. (January 27, 1958); Phillips Petroleum Co. v. Corporation Commission of Oklahoma, U.S. (January 27, 1958) and Cities Service Gas Co. v. State Corporation Commission of Kansas, U.S. (January 20, 1958).

to refund the difference between the ten cent amount paid and 9.8262¢, from the date of the allowance of the ten cents. The Commission in this fashion made it clear that so far as it was concerned the 9.8262¢ rate was the one effective and applicable on June 7 1954. Thus Natural was deprived of its contract rate through a unilateral filing of a higher rate by Dorchester, with no hearing or finding by the Commission — the only regulatory agency with authority over the contract rate — as to the illegality of that rate.

Another move in this astonishing sequence of events had occurred on December 27, 1955, when Dorchester "[t]o remove any uncertainty with respect to the status of the rate proceeding * * * " filed a 9.8262¢ rate to be effective as of March 1, 1955. Natural objected to this procedure. The Commission referred to it in its January 5, 1956 order but did nothing else regarding it, and acted as above outlined. On February 3, 1956, the Commission by letter stated that it had decided to treat the December 27, 1955 filing as Supplement #6 (there was no Supplement #5) to be effective at the expiration of the thirty days statutory notice which had elapsed January 27, 1956, and that the 9.8262¢ rate became effective on that date. Once more Natural objected. On February 24, 1956, the Commission, accepting that protest as an application for rehearing on its February 3rd decision, denied it.

In our endeavor to ascertain the legal rate on June 7, 1954 for the gas contracted for by Natural from Dorchester we start with the governing law laid down by the Supreme Court in its Mobile decision.[7] Under that law a unilateral filing of a new rate by one party cannot, over the protest of another party, annul the rate established by contract between the parties. The fact that the Mobile case dealt with

[7] United Gas Pipe Line Company v. Mobile Gas Service Corporation, 350 U.S. 332 (1956).

an attempt to supersede an already filed rate and that the instant case is concerned with the filing of an initial rate is an immaterial difference. The court pointed out at page 344 that "* * * denying to natural gas companies the power unilaterally to change their contracts in no way impairs the regulatory powers of the Commission * * * to modify them when necessary in the public interest." The shortcoming here has been that the Commission made no attempt to find what was in the public interest. The Court in Mobile further indicated, page 344, that while natural gas companies are precluded "* * * from unilaterally changing their contracts simply because it is in their private interests to do so, * * *" they nonetheless have under § 5(a) of the Natural Gas Act. * * * an avenue of relief when their interests coincide with the public interest." Thus while they understandably are "* * * not given the same explicit standing to complain of their own contracts as are those who represent the public interest or those who might be discriminated against, there is nothing to prevent them from furnishing to the Commission any relevant information and requesting it to initiate an investigation on its own motion. And if the Commission, after hearing, determines the contract rate to be so low as to conflict with the public interest, it may under § 5(a) authorize the natural gas company to file a schedule increasing the rate." But the Court declared in the related case of Federal Power Commission v. Sierra Pacific Power Company, 350 U.S. 348 (1956) 354-5, that the contract rate is not necessarily unreasonable because it yields less than a fair return. Though it is true that the Commission may not normally impose a rate affording less than a fair return, it does not follow that the Commission is required to relieve a company of an improvident bargain which affords less than a fair return.

Also Dorchester should be required to refund to Natural the increase based upon the difference between 10 cents and 9.8262 cents per Mcf plus interest at the rate of 6% per annum on such difference from dates of payments by Natural to the date of refund.

The Commission *orders:*

(A) The increase inrates and charges proposed by Dorchester Corporation by Supplement No. 4 to its FPC Gas Rate Schedule No. 2 filed on December 6, 1954, be and the same is hereby dismissed, and said filing shall have no force or effect.

(B) Effective as of the date of issuance hereof the permission heretofore granted in the Commission's order issued April 7, 1955, that Dorchester Corporation provisionally collect and receive, subject to bond, the increased rate provided for by Supplement No. 4 to its FPC Gas Rate Schedule No. 2, shall cease and terminate.

(C) Effective as of the date of issuance hereof, the rates and charges provided in Supplement No. 3 to Dorchester Corporation FPC Gas Rate Schedule No. 2, as effective prior to the filing of Supplement No. 4, is hereby reinstated.

(D) Within 30 days from the date of issuance of this order Dorchester Corporation shall make refund to Natural Gas Pipeline Company of America of the increase based upon the difference between 10¢ and 9.8262¢ per Mcf plus interest at the rate of 6% per annum on such difference from the dates of payment by Natural to the date of refund, and shall report to the Commission in writing and under oath, in quadruplicate, within 15 days after the making of such refund, the amount of refund, the dates covered by the refund, the billing units and all other pertinent data. If agreeable to Natural, such refund may be accomplished by the issuance by Dorchester of appropriate

credit memorandum to Natural, subject to the requirements of this paragraph.

(E) Dorchester's letter dated November 15, 1955 is hereby rejected.

(F) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act; nor shall it be construed as constituting approval by this Commission of any service agreement, rate, charge, classification, or any

[1441]

rule, regulation or practice affecting such service agreement or rate; nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service agreement or rate.

By the Commission. Commissioner Draper dissenting.

J. H. GUTRIDE

J. H. Gutride
Acting Secretary

[1455]

**FEDERAL POWER COMMISSION**
Washington 25

Feb. 3, 1956

Vinson, Elkins, Weems & Searls
Esperson Building
Houston 2, Texas

Gentlemen:

This is to advise you of the acceptance for filing of your "Rate Filing" received by the Commission on December 27, 1955 with your letter of transmittal dated December 23, 1955. For purposes of identification the filing has been assigned the following designations.

Dorchester Corporation
Supplement No. 6 to
FPC Gas Rate Schedule No. 2

The Commission considered your proposal to make this supplemental rate schedule effective as of March 1, 1955 but took no action to grant the necessary waiver of statutory notice to establish such effective date. Consequently such supplement became effective January 27, 1956 upon expiration of 30 days statutory notice.

The foregoing acceptance shall not be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the "Rate Filing"; nor shall it be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding

now pending or hereafter instituted by or against your company.

Commissioners Draper and Connole stated that in view of the action taken by the Commission in the order adopted December 30, 1955 and issued January 5, 1956, in the adoption of which Commissioner Connole did not participate and Commissioner Draper dissented, and more specifically paragraph (C) of the order, Supplement No. 3 to Dorchester Corporation FPC Gas Rate Schedule No. 2 has been reinstated; that the instant rate filing is therefore superfluous and should be rejected.

Very truly yours,

LEON M. FUQUAY
Secretary

cc: Natural Gas Pipeline Company of America
20 North Wacker Drive
Chicago, Illinois

[1461]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matter of Dorchester Corporation }

## ORDER DENYING APPLICATION FOR REHEARING

Adopted: February 15, 1956 Issued: February 24, 1956

Natural Gas Pipeline Company of America (Natural), on February 8, 1956, filed a protest which is herein construed to be an application for rehearing of the notice of the Secretary dated February 3, 1956. The aforesaid notice made effective as of January 27, 1956, Supplement No. 6 to Dorchester Corporation's FPC Gas Rate Schedule No. 2, tendered for filing on December 27, 1955. The supplement covers the sale of natural gas by Dorchester Corporation to Natural, subject to the jurisdiction of the Commission.

Natural asserted that the filing is "not in conformity with the statute and the Commission's established rules," and requested the filing be stricken from the Commission's files and rejected. In substance, the application for rehearing reiterates representations filed with the Commission by Natural on January 3, 1956, concerning the December 27, 1955 tendered filing of Dorchester Corporation.

The Commission *finds:*

The assignments of error and grounds for rehearing set forth no new facts and no principles of law which either were not fully considered by the Commission

when it permitted the aforesaid Supplement No. 6 to Dorchester Corporation's FPC Gas Rate Schedule No. 2 to become effective, or which having now been considered, warrant any change in, or modification of, the Commission's action of February 3, 1956.

The Commission *orders:*

The application for rehearing filed by Natural Gas Pipeline Company of America on February 8, 1956, is hereby denied. By the Commission. Commissioners Draper and Connole dissenting.

LEON M. FUQUAY

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Leon M. Fuquay,
Secretary.

## APPENDIX "C"

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations,

or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a pro-

ceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U.S.C. §717c]

ADMINISTRATION; POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

SEC. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such others, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different

date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. [52 Stat. 830 (1938); 15 U.S.C. §717o]

REHEARING; COURT REVIEW OF ORDERS

SEC. 19. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding

may obtain a review of such order in the circuit court of appeals of the United States[8] for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file

[8] Circuit Court of Appeals of the United States was redesignated as "United States Court of Appeals" by Act of June 25, 1948, 62 Stat. 870.

proper one, would be unworkable administratively, and would be of questionable legality, particularly in view of Sec. 154.101 which provides that acceptance for filing of any rate schedule is not to be construed as approval.

The fact that the 9.8262¢ rate was paid under protest, or that a lesser amount was paid for a while shortly thereafter, or that the basis for the 9.8262¢ rate (the Oklahoma minimum price order) subsequently has been determined to be invalid, or any other facts pertaining to the equities between the parties does not require or permit us in this proceeding, to determine what the lawful or the just and reasonable rates should have been on June 7, 1954. The 9.8262¢ rate was the "effective rate" on June 7, 1954, within the meaning of Order No. 174-A.

The filing of this rate and our acceptance thereof for filing constitutes compliance with our order, but does not constitute a determination of the proper contractual rate of the just and reasonable rate. In order that all parties similarly situated may be treated alike, insofar as possible, the filed rate must be compared with the increased rate filed later, for the purpose of determining the amount of the bond which Dorchester must file, in order to place and keep its increased rates in effect. We therefore conclude that the bond now filed, in the amount of $41,000, is proper.

We have no power to award reparations and cannot fix rates retroactively. Consequently, our authority to require Dorchester to reduce rates or refund to Natural is limited to the period commencing on March 1, 1955, when the suspended 10¢ rate became effective, subject to refund under bond.

The Commission *finds:*

The bond heretofore filed by Dorchester in the amount of $41,000 is proper.

[1439]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, and Frederick Stueck.

In the Matter of Dorchester Corporation } Docket No. G-6505

## ORDER DISMISSING PROCEEDINGS

Adopted: December 30, 1955 Issued: January 5, 1956

On December 6, 1954, Dorchester Corporation (Dorchester), an independent producer, tendered for filing Supplement No. 4 to its FPC Gas Rate Schedule No. 2, providing for an increase in its rate to ten cents per Mcf for natural gas sold to Natural Gas Pipeline Company of America (Natural), produced in the Guymon-Hugoton Field, Texas County, Oklahoma.

By order issued December 29, 1954, the Commission suspended the proposed change in rates until March 1, 1955, and ordered a hearing therein on a date to be fixed by further order of the Commission. Thereafter Dorchester filed a motion, pursuant to Section 4 of the Natural Gas Act (Act) to place said new rate into effect under a bond; and by order issued April 7, 1955, the Commission permitted the proposed 10-cent rate to become effective as of March 1, 1955, subject to the filing by Dorchester of a corporate surety bond to assure refund of any portion of such increased rate which the Commission might ultimately find not to be justified.

Pursuant to Commission order issued September 28, 1955, hearings were held with respect to the lawfulness of the proposed increased rate contained in said Supplement No. 4. After the hearings, on December 23, 1955, we issued an order omitting the intermediate decision procedure, and pursuant thereto the Presiding Examiner certified to us the record in this proceeding.

Thereafter, on December 27, 1955, Dorchester filed as its rate to be effective as of March 1, 1955, the date of expiration of the suspension of Dorchester's proposed change in rates embodied in its aforesaid Supplement No. 4, the rate of 9.8262¢, which the Commission has heretofore found to be the effective rate on June 7, 1954, within the meaning of Order No. 174-A. Dorchester stated that upon acceptance of this rate by the Commission, Dorchester will promptly issue an appropriate credit memorandum to Natural for the difference between the payments made by Natural at the 10¢ rate and 9.8262¢ rate, plus interest at 6% per annum on such amount from the date of payment to the date of the issuance of such memorandum. The stated purpose of this filing was "to remove any uncertainty with respect to the status of the rate proceeding" in this docket, and to "settle and terminate all matters" herein.

[1440]

Under the authority contained in Sections 4, 16 and complementary provisions of the Act, the termination of this proceeding is proper since it permits the orderly and expeditious disposition of a matter the continuation of which would serve no further purpose, in a manner consonant with the proper and efficient exercise of our functions under the Act and with the interests of the parties and the public.

In view of the foregoing, Dorchester's letter filed with the Commission on November 15, 1955, should be rejected.

FILED
JUN 18 1958
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No. 1003

DORCHESTER CORPORATION,

*Petitioner,*

v.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
FEDERAL POWER COMMISSION,

*Respondents.*

## REPLY TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

GENE M. WOODFIN
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Houston, Texas

*Of Counsel*

BORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

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No. 1003

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DORCHESTER CORPORATION,

*Petitioner,*

v.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
FEDERAL POWER COMMISSION,

*Respondents.*

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## REPLY TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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The Petition for Writ of Certiorari heretofore filed in this proceeding by Dorchester Corporation ("Dorchester") is predicated upon two fundamental issues which may be summarized as follows:

(1) As a result of the decision by this Court in the *Phillips* case, Petitioner was required to file the contract price it was receiving from Natural Gas Pipeline Company of America ("Natural") on June 7, 1954. The contract provided for a price of 6.253¢ per Mcf, but was subject to lawful state regulatory orders. Therefore, on that date, Natural was paying a price or 9.8262¢ per Mcf pursuant to the Oklahoma minimum price law. However, in *Natural Gas Pipe-*

*line Co.* v. *Panoma Corp.*, 349 U.S. 44 (April 11, 1955), this Court held such minimum price law invalid because it conflicted with the implementation of the paramount federal jurisdiction by the Federal Power Commission in its Order No. 174, issued July 16, 1954. Therefore, in order to ascertain what the contract price was on June 7, 1954, it is necessary to first determine whether or not the Oklahoma minimum price law constituted a valid exercise of state regulatory power over matters of local concern prior to the issuance of Order No. 174. We do not believe that this question has been considered by this Court.

(2) In reversing the Commission's order, the Court of Appeals not only set aside such order but also dictated subsequent Commission action to be taken with respect thereto by modifying the Commission's orders so as to determine the manner and method of refund to be made without giving the Commission an opportunity to determine how such refund should be made or whether or not the rate reinstated (6.253¢ per Mcf) was so low as to have an adverse effect on the public interest. In so doing, the Court of Appeals usurped the administrative function and rendered a decision directly in conflict with a recent decision of another Court of Appeals on the same matter.

## I.

Natural has filed a brief in opposition to the Petition for Certiorari. In its brief, Natural asserts that this Court has already determined that Congress preempted the field by enacting the Natural Gas Act in 1938 and thereby precluded state regulation. Therefore, Natural concludes the Oklahoma minimum price law was void ad initio. As authority for this contention, Natural refers to this Court's opinion in *Natural Gas Pipeline Company of America* v. *Panoma Corp., supra.* We disagree with Natural's interpretation of

the *Panoma* case. If Natural's interpretation is correct, then the first ground asserted above as a basis for our Petition for Certiorari is without merit. However, if Natural's interpretation is erroneous, and this Court has not considered the question of the retroactive effect of its decision in the *Panoma* case, then, as pointed out in our petition, that is a matter of industry-wide importance which should be determined by this Court.

## II.

Rule 19(b) of the Supreme Court Rules provides that one of the situations in which this Court is likely to grant a writ of certiorari is "where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter." We believe that the action of the Court of Appeals in this case in modifying the Commission's order so as to determine the manner and method of refund to be made by Petitioner without giving the Commission an opportunity to determine how such refund might be made, or to determine whether or not the rate reinstated (6.253¢ per Mcf) was so low as to have an adverse effect on the public interest, is in direct conflict with the decision rendered by the Court of Appeals for the Tenth Circuit in *Cities Service Gas Company* v. *Federal Power Commission*, decided May 14, 1958. For the convenience of the Court that opinion is printed in the Appendix attached hereto. The fact situation and legal issues presented in the *Cities Service* case are coincident with those which confronted the Court of Appeals in this case. There, the Tenth Circuit held that the Commission erred in filing the rate established by the Kansas minimum price law as the rate in effect on June 7, 1954, but the court did no more and expressly stated:

> "Our duty is to merely set aside the order of the Commission accepting the filed rate and to direct the

with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. [52 Stat. 831 (1938); 15 U.S.C. §717r]

## APPENDIX "D"

Address All Communications
To The Secretary

FEDERAL POWER COMMISSION

WASHINGTON 25

April 28, 1958

Docket No. R-168
Notice of Proposed Rulemaking
TO THE PARTY ADDRESSED

Gentlemen:

Enclosed is the notice issued by the Commission today in the above-entitled matter.

Very truly yours,

/s/ JOSEPH H. GUTRIDE,
*Secretary.*

Enclosure

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

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Docket No. R-168

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**Nonacceptability of Rate Filings Based Upon State-Prescribed Minimum Prices**

## NOTICE OF PROPOSED RULEMAKING

(April 28, 1958)

Notice is hereby given that the Commission has under consideration the issuance of a statement of general policy in the above-entitled matter.

On January 20, 1958, the Supreme Court, in *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 355 U.S. 391 (citing *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and *Natural Gas Pipeline Co.* v. *Panoma*, 349 U.S. 44), vacated a judgment of the Supreme Court of Kansas thereby holding, in effect, that the State of Kansas cannot lawfully fix a minimum price at the wellhead to be charged for, or attributed to, natural gas where such gas is sold in interstate commerce for resale, either at the wellhead or after production and gathering. A week later the Court, citing the *Cities Service* case, reversed the Oklahoma Supreme Court which had erroneously applied the holding in the *Panoma* case, *supra*, to sales of residue gas only and not to sales at or near the wellhead. *Michigan Wisconsin Pipe Line Co.* v. *Corporation Commission of Oklahoma*, 355 U.S. 425.

It follows from the decisions in these cases that rate filings made pursuant to Section 4 of the Natural Gas Act and Part 154 of the Regulations under the Natural Gas Act may have no legal basis to the extent that such filings are predicated solely on State-prescribed prices of the nature described above.

Although, under Section 4 (a) of the Administrative Procedure Act, no general notice of proposed rulemaking is required where a statement of general policy is proposed to be issued, the Commission is cognizant of the importance of the decisions of the Supreme Court and any statement that it might issue in this regard. It, therefore, is taking this method of informing the public and interested parties that it is proposing to issue a statement substantially as follows as an amendment of its general rules, Part 2 — General Policy and Interpretations, and possibly other statements or take other actions;

§2.56. *State-prescribed minimum prices for natural gas.* Since the Supreme Court has held, in effect, that States cannot lawfully fix a minimum price at the wellhead to be charged for, or attributed to, natural gas where such gas is sold in interstate commerce for resale, the Commission will reject any tender for filing pursuant to Section 4 of the Natural Gas Act which would initiate or change the price for the sale of natural gas in interstate commerce for resale to the extent that such filing is based upon a State-prescribed or attributed minimum price. (E.g., Gas Price-Fixing Order of State Corporation Commission of Kansas, entered December 2, 1953 or the corresponding order of the Corporation Commission of Oklahoma.)

Among those questions which the Commission is considering in this connection which appear to be raised by the decisions of the Supreme Court referred to, are:

1. whether any rate filing predicated solely upon a State minimum price order which has been declared invalid by the United States Supreme Court —

a. must now be regarded as having been invalid from the date of filing; or

b. must now be regarded as having become invalid upon the issuance on January 20, 1958 of the decision of the Supreme Court in *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 355 U.S. 391, or on March 12, 1958, when the mandate of the Supreme Court was issued in that case; or

c. must now be regarded as having become invalid on the happening of some other event; or

d. must be regarded as still effective;

i. by reason of failure of the purchaser thereunder to protest the filing; or

ii. by reason of an agreement, expressed or implied, to pay the filed rate;

iii. by reason of legal estoppel against a protest by a purchaser thereunder; or

iv. for any other reason.

2. whether any of the above questions should be decided by the Commission by means of a general order or decided in individual cases after appropriate proceedings, including hearings; or should be left for decision by an appropriate court in each individual situation;

3. in the absence of reparation power under the Natural Gas Act, whether the Commission can force any purchaser receiving refunds under an invalid rate as herein mentioned to pass such refunds on to its customers, and if not, whether the ultimate consumers would benefit from any refunds retained by the purchaser to whom paid by a producer hereunder.

The statement of general policy and the order herein described are proposed to be issued under the authority granted to the Federal Power Commission by Sections 4 and 16 of the Natural Gas Act (52 Stat. 822, 830; 15 U.S.C. 717c, 717o).

Any person may submit to the Federal Power Commission, Washington 25, D. C., not later than May 27, 1958, data, views, comments, and suggestions in writing concerning the proposed statement and order. An original and nine copies of any such submittal should be filed. The Commission will consider any such written submittals before acting on the proposed statement and order.

/s/ JOSEPH H. GUTRIDE,
*Secretary.*

> Commission to strike supplement no. 26 from its files. Our authority is then exhausted. Cf. *Sun Ray Mid-Continent Oil Co.* v. *F. P. C.*, 353 U.S. 944, 77 S. Ct. 792, 1 L. Ed. 2d 794".

In so limiting its function on review, the Tenth Circuit was merely following the mandate of this Court in *Sun Ray Mid-Continent Oil Company* v. *F. P. C.*, 353 U.S. 944 (1957), where it was stated:

> "The power of the Court of Appeals in reviewing the order of the Federal Power Commission was exhausted when it held that the Commission had authority under Section 7(c) and (e) of the Natural Gas Act to issue certificates of public convenience and necessity of limited duration. *Securities & Exchange Commission* v. *Chenery Corp.*, 318 U.S. 80."

We believe that the conflict between the action taken by the Court of Appeals in this case and the opinion rendered by the Tenth Circuit in the *Cities Service* case is clearly apparent, and that therefore, this Petition for Writ of Certiorari presents a question within the purview of Rule 19(b) of the Supreme Court Rules. Accordingly, we submit that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, GENE M. WOODFIN, one of the Attorneys for Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of June, 1958, I served copies of the foregoing Reply Brief on Counsel of Record for Respondents at the following addresses:

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# APPENDIX

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

No. 5666

CITIES SERVICE GAS COMPANY,

*Petitioner,*

v.

FEDERAL POWER COMMISSION,

*Respondent,*

MAGNOLIA PETROLEUM COMPANY,

*Intervenor.*

## PETITION TO REVIEW ORDER OF THE FEDERAL POWER COMMISSION

Decided May 14, 1958

Before PICKETT, LEWIS AND BREITENSTEIN, Circuit Judges.

LEWIS, Circuit Judge.

The petitioner, Cities Service Gas Company, seeks to review and thereupon to set aside an order of the Federal Power Commission issued March 21, 1957, as modified May 17, 1957, accepting for filing a rate schedule submitted by the intervenor, Magnolia Petroleum Co. Authority for review is found in Section 19(b) of the Natural Gas Act, 15 U.S.C.A. 717r (b).

The Commission accepted the rate schedule as filed pursuant to the provisions of Section 4 (e) of the Natural Gas Act, 15 U.S.C.A. 717c (e) and the pertinent regulations, 18 C.F.R. 154.92 (a) and 154.93. The filing included a gas pur-

chase contract entered and executed by petitioner and Magnolia on June 17, 1946, which provided for a sale of gas at a basic six cents per Mcf 16.4 p.s.i.a., and an order of the Kansas Corporation Commission, effective January 1, 1954, which set an eleven-cent minimum price, 14.65 p.s.i.a., on gas produced from the field covered by the contract. The Commission order was filed as Supplement 26. At such time petitioner had unsuccessfully attacked the authority of Kansas to regulate rates upon gas purchased for resale in interstate commerce, Cities Service Gas Co. v. Kansas Corporation Commission, 180 Kan. 454, 304 P. 2d 528, but the subsequent reversal of the Kansas holding by the United States Supreme Court, 355 U.S. 391, 78 S. Ct. 381, 2 L. Ed. 2d 355, premises petitioner's present contentions. In harmony with the earlier holdings of Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 74 S. Ct. 794, 98 L. Ed. 1035, and Natural Gas Pipeline Co. of America v. Panoma Corp., 349 U.S. 44, 75 S. Ct. 576, 99 L. Ed. 866, the U.S. Supreme Court found the Kansas Corporation Commission without authority to set rates upon the gas herein involved. The eleven-cent rate as evidenced by Supplement 26 was thus determined to be an invalid compulsion upon petitioner and Magnolia.

Since the issuance of the Kansas Corporation Commission order of January 1, 1954, petitioner has paid the eleven-cent under protest and in furtherance of its protest instituted an action against Magnolia in the U. S. District Court for the District of Kansas in which a determination of contract rights was sought. Pursuant to an order of that court, payments since July 22, 1955, have been made into court and the court has paid over to Magnolia amounts equal to the six-cent contract price and has impounded the remainder of the eleven-cent payment. The District Court action is still pending.

Magnolia's tendered rate schedule was accepted for filing by the Federal Power Commission on March 21, 1957, with recognition of the parties' existing controversy worded "subject, however to the express condition that such acceptance is without prejudice to any claims or contentions which have been made by or for Magnolia Petroleum Company or by or for Cities Service Gas Company in pending litigation concerning this particular sale of gas." Both companies petitioned for rehearing and clarification and the Power Commission then issued its order of May 17, 1957, "Modifying Order Accepting Rate Schedule for Filing and Denying Petitions for Rehearing." The modification to the original order was the removal of the condition set out above. Petitioner's further efforts for rehearing were rejected because "there is no provision under the Natural Gas Act nor in the Commission's rules for applications for rehearing of orders denying rehearing."

In support of review, petitioner now urges that the Power Commission erred in accepting the eleven cent state-ordered minimum price as the rate to be paid by petitioner on and after June 7, 1954;[1] that the decision in Cities Service Gas Co. v. Kansas Corporation Commission, supra, rendered

[1] Petitioner argues here that the Kansas Corporation Commission order, in view of earlier decisions of the U. S. Supreme Court was so patently invalid that the Federal Power Commission erred in giving any cognizance to the order and should have rejected it when filed by Magnolia. We reject that argument. On the pertinent date, June 7, 1954, the authority of the Kansas Commission had been upheld by the Kansas Supreme Court, the highest judicial body that had then considered the precise question involved. It was not the function of the Federal Power Commission to pass upon the question of whether or not the Kansas Supreme Court was in error. Good administrative policy dictates otherwise. The inherent difficulties that may arise from a later change in judicial interpretation are not attributable to administrative fault. Our books of law carry many cases requiring reversal of a lower court by reason of a change occurring between trial and appeal.

the order of that commission void ab initio; and that this court should adjudicate the contract price and effective rate as of June 7, 1954 to be six cents. The respondent Commission answers that the acceptance of a rate schedule for filing is not a determination by the Commission as to the validity or reasonableness of the rate and that the order complained of was merely procedural and interlocutory and not subject to review; the Commission concedes that petitioner should receiver, in a proper action, any excess payments but contends that the Kansas order is and always has been but a nullity in the filing and cannot be the basis for any relief to petitioner. Magnolia urges that the Commission order is but interlocutory and not reviewable and that petitioner is not aggrieved and has not exhausted the administrative remedies; and pointing out that the eleven-cent rate was the actual amount paid on June 7, 1954, asserts that there is no error in the orders of the Power Commission.

We consider first the jurisdictional aspects of the review sought.

As was recognized in Phillips Petroleum Co. v. Federal Power Commission (10 Cir.) 227 F. 2d 470, cert. den. 350 U.S. 1005, Section 19 (b) of the Natural Gas Act does not by its terms limit the review of orders of the Commission to those which are final in form and substance. But it is entirely proper, in order to keep in proper perspective the duties and powers of administrative bodies with respect to their specialized fields, for courts to avoid conflicts by refusing to interfere in matters yet within the consideration of the Commission. Thus it has been held that an order of the Commission is not reviewable unless there has been an application to the Commission for rehearing; nor is an order granting a rehearing subject to review. Federal Power Commission v. Metropolitan Edison Co., et al., 304 U.S. 375, 58 S. Ct. 963, 82 L. Ed. 1408. It is there said:

> "The statute contemplates a case in which the Commission has taken evidence and made findings. Its findings, if supported by evidence, are to be conclusive . . . The provision for review thus relates to orders of a definitive character dealing with the merits of a proceeding before the Commission and resulting from a hearing upon evidence and supported by findings appropriate to the case."

Such language must be read in relation to the facts of the case and, so limited, does not establish an inflexible standard requiring a conventional hearing and resulting in findings supported by evidence as a condition to review. Otherwise, the procedure for review could be successfully circumvented by a refusal to act upon a statutorily granted right. Pacific Power & Light Co., et al v. Federal Power Commission (9 Cir.) 98 F. 2d 835. An order of an administrative body is reviewable when action taken in advance of hearings or adjudication result in the setting of legal consequences, Columbia Broadcasting System v. United States, 316 U.S. 407, 62 S. Ct. 1194, 86 L. Ed. 1563. The order of the agency is final for purposes of review when it imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process, Isbrandtsen Co. v. United States (C.A. D.C.) 211 F. 2d 51, cert. den., 347 U.S. 90, and cases cited therein.

The present case is comparable to that considered by us in Phillips, supra, wherein we stated:

> "The orders sought to be reviewed here do not deal with the merits of the proceedings before the Commission in the sense that they were entered upon evidence concerning the reasonableness of the rates. They do not purport to finally determine Phillips' wholesale rates. The matter is left to a conventional hearing in these proceedings. But the orders do purport to establish with finality the wholesale rates which Phillips

was authorized to charge Michigan on June 7, 1954 and thereafter until changed by order of the Commission pursuant to hearing."

Also similar in impact to the case at bar is the order accepting a new schedule filed by a natural gas company in United Gas Pipe Line Co. v. Mobile Gas Service Corp., et al., 350 U.S. 332, 76 S. Ct. 373, 100 L. Ed. 373.

We consider, as did the Third Circuit in a similar case, Natural Gas Pipeline Company of America v. Federal Power Commission, filed February 26, 1957, (not yet reported), the contention of the Commission and Magnolia that petitioner is not aggrieved with Section 19 (b) of the Natural Gas Act most unrealistic. Petitioner has been compelled to pay eleven cents for its gas, and wrongfully so, because the Commission's acceptance of the rate schedule was pro forma the acceptance of the rate then being paid. To assert that petitioner's aggrievement lay with the invalid Kansas Corporation Commission order and not with the Power Commission's acceptance of Schedule 26 is but to play with words. Petitioner was twice aggrieved and has properly and consistently pursued separate remedies. And, since petitioner's complaint lies in the action of the Power Commission in accepting a rate schedule which was not the effective rate on the critical date, petitioner could not and need not pursue an administrative remedy under Section 5 of the Natural Gas Act to show that the accepted rate was unjust and unreasonable.

In view of the interpretation of the Natural Gas Act giving the Commission power to review rates set initially by contract, but providing no procedure by the contracting parties to either make or change rates, United Gas Pipe Line Co. v. Mobile Gas Service Corp., supra, petitioner should not bear the burden of convincing the Commission that rates which it never assented to and which were imposed upon it by an invalid order are unreasonable.

Additionally, Section 19 (b) provides that the court of appeals "shall have exclusive jurisdiction to affirm, modify, or set aside" the orders of the Commission. The power of a district court to grant reparation of amounts paid pursuant to an invalid order accepted as a current rate by the Commission is presently being questioned by a petition for certiorari of the case of Harrington v. Federal Power Commission (5 Cir.) 246 F. 2d 915. Regardless of petitioner's right to pursue its remedies for the return of money paid prior to March 21, 1957, its rights to redeem excess payments made subsequent to the Commission's action are further imperiled in a separate action by the existence of the outstanding Commission order.

The question of whether or not petitioner has fully exhausted its administrative remedies is partially resolved by our determination that the order of the Commission was a final order and by petitioner's efforts to have the order changed by its protest and petition for rehearing. Petitioner was not obligated to undertake the burden of persuading the Commission to take action to invalidate the rate as unreasonable or detrimental to the public interest in accordance with Section 5.

That petitioner should have sought a declaratory order under Section 5 (d) of the Administrative Procedure Act, 5 U.S.C.A. 1004 (d) to terminate a controversy or remove an uncertainty is an argument obviously without merit. The position of the Commission was clearly announced and the petitioner's position was made known to the Commission -- there was no uncertainty which had not been resolved by the Commission's action on the petitions.

Finally, although the Commission admits the present invalidity of the Kansas order and offers to eventually expunge it from its records as void ab initio, the Intervenor insists that the legally effective rate for the period of time

during which payments were made in accordance with the order was the eleven-cent rate. Magnolia, in accordance with the definition of "rate schedule" contained in the Commission's regulations, 18 C.F.R. 154.93, filed its contract and twenty-seven other supplementary documents "effective and applicable on and after June 7, 1954, showing the service to be provided and the rates and charges, terms, conditions, classifications, practices, rules and regulations affecting or relating to such rates and charges . . . "

If the Kansas order were valid, there is no question but that despite the protests of the parties the contract would be altered by the order. Petitioner accepted this proposition by paying the ordered rate although it sought to have the order declared invalid. Having succeeded it is no worse position than the consumer in United Gas Pipe Line Co. v. Mobile Gas Corp., supra, which was aggrieved by the filing of a unilaterally increased rate initiated by its producer. The Act recognizes the rights of the parties to set rates by individual contract and abrogates none of the usual contract rights except for the reviewing powers granted the Commission upon hearing. As was said in the Mobile case:

> "Our conclusion that the Natural Gas Act does not empower natural gas companies unilaterally to change their contracts fully promotes the purposes of the Act. By preserving the integrity of contracts it permits the stability of supply arrangements which all agree is essential to the health of the natural gas industry. Conversion by consumers, particularly industrial users, to the use of natural gas may frequently require substantial investments which the consumer would be unwilling to make without long-term commitments from the distributor, and the distributor can hardly make such commitments if its supply contracts are subject to unilateral change by the natural gas company whenever its interests so dictate . . . On the other hand,

> denying to natural gas companies the power unilaterally to change their contracts in no way impairs the regulatory powers of the Commission, for the contracts remain fully subject to the paramount power of the Commission to modify them when necessary in the public interest. The Act thus affords a reasonable accommodation between the conflicting interests of contract stability on the one hand and public regulation on the other."

In the present case, as in the Mobile case, no hearing has been held to determine the propriety of the filed rate. When the United States Supreme Court struck down the Kansas order, there was no longer a valid order which could modify the contract rate, and the contract rate was the rate effective on June 7, 1954. See Natural Gas Pipeline Company of America v. Federal Power Commission, supra.

Intervenor, however, asserts that by their contract Magnolia and Cities Service agreed to abide by orders of any regulatory body until such time as the same was held with finality to be invalid.

> All of the provisions of the contract are subject to all legislation, State or Federal, with respect to the subject matter hereof, and to all present and future gas proration and other applicable orders, rules and regulations of duly constituted authorities having jurisdiction unless the same shall be declared or held, with finality, to be invalid or ineffective with respect thereto. . . ."

To so interpret the contract would require a strained and unnatural construction of the parties' intent and a substitution of the word "until" for "unless."

The Commission, in a supplemental memorandum, states by way of clarification of its brief in chief that it is not admitting that the contract rate is six cents per Mcf. This is

a matter neither proper for our determination nor raised in the issues before us. Our duty is to merely set aside the order of the Commission accepting the filed rate and to direct the Commission to strike Supplement No. 26 from its files. Our authority is then exhausted. Cf. Sunray Mid-Continent Oil Co. v. F.P.C., 353 U.S. 944, 77 S. Ct. 792, 1 L. Ed. 2d 794.

It is so ordered.

FILED
JUN 11 1958
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No. 1003

DORCHESTER CORPORATION,
*Petitioner,*

v.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
FEDERAL POWER COMMISSION,
*Respondents.*

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## BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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## BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Natural Gas Pipeline Company of America ("Natural"), petitioner below in a statutory review proceeding under Section 19(b) of the Natural Gas Act (*Natural Gas Pipeline Company of America* v. *Federal Power Commission*, 253 F. 2d 3 (3d Cir. 1958), submits this brief in opposition to the petition for certiorari filed by Dorchester Corporation ("Dorchester"), the intervenor in that proceeding.

### Statement of the Case

The Court of Appeals in its opinion has summarized, chronologically and in the briefest possible compass, the complex series of events giving rise to this litigation. Reference to that

description (see pp. 19–24 of Appendix A to the petition for certiorari) reveals the following facts—of significance for the disposition of this request for review—which are not reflected in Dorchester's Statement of the Case in its petition:

1. From the initial issuance on July 29, 1952 of the Oklahoma minimum price order, Natural asserted its invalidity through the legal procedures available to it, and made its payments at the minimum price of 9.8262¢ per Mcf only under express protest and with the announced purpose of seeking restitution of the excess over the contract price of 6.253¢, if and when it succeeded in establishing the invalidity of the order.

2. When, after the Federal Power Commission ("Commission") acted to bring the independent producers into compliance with the Natural Gas Act ("Act"), Dorchester sought to file the Oklahoma minimum price as the contract rate effective June 7, 1954, Natural protested that filing and urged the Commission either to reject it or to permit it to become effective only under safeguards which would assure the return to Natural of the excess payments upon the invalidation of the state minimum price law. On November 30, 1954, the Commission accepted the filing on a conditional basis, pending the determination by this Court of Natural's appeal with respect to the state minimum price law. Nearly a year later, however, and after this Court had held the Oklahoma law invalid, the Commission repudiated the condition.

3. On December 6, 1954, Dorchester filed with the Commission a new rate of 10¢ per Mcf, and the Commission permitted this rate to become effective March 1, 1955, but only under bond and subject to further hearing as to its lawfulness. At the conclusion of such hearings, Dorchester voluntarily purported to withdraw and abandon that rate filing; and, by reason of this action, the Commission, in its order of January 5, 1956, dismissed the 10¢ rate proceeding. As contemplated by the Act, the Commission was then under the necessity of directing

Dorchester to make a refund to Natural of the difference between the rate legally in effect immediately prior to March 1, 1955, on the one hand, and the 10¢ rate which Natural began paying on that date as required by the Act, on the other. Having found that the former rate was the contract rate of 6.253¢ per Mcf, rather than the minimum price of 9.8262¢, the Court of Appeals, as it was empowered to do by the Act, directed that the Commission's order of refund be modified accordingly.

## Reasons for Denying the Writ

### I

Dorchester asserts, as a reason why this Court should grant review, that the determination of the questions presented "affects all other sellers of gas in Oklahoma and Kansas who received payments in excess of their contract prices pursuant to the minimum price laws promulgated by the regulatory agencies of those states," which payments Dorchester characterizes as having been "received with the assurance of this Court in *Cities Serv. Gas Co.* v. *Peerless O. & G. Co.*, 340 U. S. 179 (1950), that minimum price laws were a proper exercise of state regulatory power." There was no such assurance; and, in any event, this case does not have the reach so claimed for it.

In *Cities Service*, no issue was presented as to possible preemption of the field because of the applicability of the Act to independent producers; and this Court expressly noted that it was sustaining the state minimum price law without reference to this issue. When the Oklahoma minimum price order here in issue was promulgated in 1952, Natural was the purchaser who challenged its validity; and when, after *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, was decided in 1954, Natural was the purchaser who protested the filing of the Oklahoma minimum price in response to the Commission's orders promulgated for the purpose of bringing the independ-

ent producers into compliance with the Act, to which they had been subject at all times since its original enactment in 1938. The Court of Appeals decided that the Commission's acceptance of this filing, *in the face of Natural's protest*, violated the principles laid down by this Court in *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332 (1956). Thus, this case decides nothing with respect to all those other instances where the buyers acquiesced in the imposition of the state minimum price and entered no objection to the filing with the Commission of the minimum price as the compliance rate.

## II

In support of its petition for certiorari, Dorchester first argues that the Court of Appeals has erroneously expanded this Court's rulings sustaining Natural's challenges to the Oklahoma minimum price law (*Natural Gas Pipeline Company of America* v. *Corporation Commission of Oklahoma*, and *Natural Gas Pipeline Company of America* v. *Panoma Corporation*, 349 U. S. 44 (1955); and it couples this claim with the further assertion that the decision below conflicts with other decisions of this Court sustaining various exercises of state regulatory power where preemption had not taken place. There is no such expansion or conflict.

When this Court upheld Natural's attack on the Oklahoma minimum price, it did so in a *per curiam* opinion which noted simply that, in the light of *Phillips*, Congress must be deemed to have preempted the field in such manner as to leave no room for state regulation of the price of natural gas sold in interstate commerce for resale. That the Court considered, and rejected, the argument that preemption did not take place until the Commission, after *Phillips*, moved to prescribe an orderly method for bringing the independent producers into compliance with the comprehensive federal regulatory scheme

provided in the Act, is evident from the lone dissent noted by Mr. Justice Douglas in these terms:

> "Mr. Justice Douglas, being of opinion that State regulation of price is permissible until the Federal price regulation permitted by (*Phillips*) is imposed, dissents."

Three Courts of Appeals have recently held that it is the scope of the majority opinion which is to be accorded this Court's decisions invalidating the state minimum price laws. With respect to the Oklahoma law, this is the holding of the Third Circuit in the opinion below; and it is also the holding of the Fifth Circuit in *Harrington* v. *Natural Gas Pipeline Company of America*, 246 F. 2d 915 (5th Cir., 1957), certiorari denied in No. 901, May 19, 1958. As to the Kansas law, it is the holding of the 10th Circuit in *Cities Service Gas Company* v. *Federal Power Commission*, decided May 14, 1958 and not yet reported. There are no decisions to the contrary.

The argument now advanced by Dorchester was first made in identical terms (and by the same counsel) in a motion to the Fifth Circuit for leave to file a second petition for rehearing in *Harrington*. That is the case in which Natural has gotten a judgment of restitution for the excess payments made, under protest and the compulsion of the Oklahoma minimum price order, to the predecessor in interest of Dorchester, in respect of the period from 1952 to July 1, 1954, the date on which Dorchester took over the seller's position under the contract. In denying the motion founded solely on this argument (253 F. 2d 231), the Fifth Circuit said, on March 5, 1958:

> "PER CURIAM: Leave to file a second petition for rehearing is denied. *Natural Gas Co.* v. *Panoma Corp.*, 349 U.S. 44. The notation of Mr. Justice Douglas's dissent shows that the Court considered the question presented by this second petition for rehearing. See also the recent per curiam opinions of the Supreme Court in No. 85, *Cities Service Gas Co.* v. *State Corporation Commission*

*of Kansas*, decided January 20, 1958; and in No. 86 *Michigan Wisconsin Pipe Line Co.* v. *Corporation Commission of Oklahoma*, No. 111 *Phillips Petroleum Co.* v. *Corporation Commission of Oklahoma*, No. 112 *Phillips Petroleum Co.* v. *Corporation Commission of Oklahoma*, No. 113 *Phillips Petroleum Co.* v. *Corporation Commission of Oklahoma*, decided January 27, 1958, 26 L.W. 3219."

In the petition for certiorari filed in respect of that decision, which petition was denied on May 19, 1958, the same argument, in both its aspects and precisely in its present formulation, was pressed upon this Court. This argument was first made below in the petition for rehearing filed with the Third Circuit on March 28, 1958. This petition was denied on April 10, 1958 without opinion.

This unanimity among the Circuits as to the meaning of this Court's decisions invalidating the state minimum price laws is not surprising. Not only does this Court's purpose to regard these laws as void *ab initio* appear from the face of the Court's opinion in *Panoma*, especially when considered in connection with Justice Douglas' dissent, but any other conclusion misconceives the true nature of the Commission's efforts in 1954, after *Phillips*, to deal with the extraordinary situation of the independent producers who had actually been under federal price regulation since 1938 but who had not been complying with the Act by reason of mistaken assumptions as to their amenability to it. The Commission's No. 174 orders did not impose regulation for the first time. Rather, they sought to devise an administrative method for bringing the producers into compliance with regulation which had been imposed long before. There is, thus, no conflict between this Court's decision in *Panoma* and other decisions, relied upon by Dorchester, where federal regulation had not yet been in fact imposed and where the Congressional intent to preempt depended for its effectuation upon such further action.

## III

Dorchester's second argument is that the Court of Appeals exceeded its authority when it directed that the Commission's order of January 5, 1956, under review, be modified so as to provide that the refund therein ordered be computed as the difference between 10¢ per Mcf and the prior legally effective rate of 6.253¢ rather than the Oklahoma minimum price of 9.8262¢, which latter rate the Court held had never become legally effective.

Section 19(b) of the Act provides that the Court of Appeals "shall have exclusive jurisdiction to affirm, modify, or set aside (the order under review) in whole or in part." The scheme of rate regulation provided in Section 4(d) of the Act contemplates that, when an increased rate is filed, the Commission may, after an initial suspension, permit it to become effective but under bond and subject to further hearing as to its lawfulness. This section further contemplates that, upon completion of these further proceedings, the Commission will "order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified."

Dorchester filed the 10¢ rate as a rate increase to supersede the prior legally effective rate. The Commission first suspended this rate, and then permitted it to become effective, under bond and subject to further hearing. That hearing was held and the record closed. At that point Dorchester acted to abandon and withdraw its 10¢ rate filing. The Commission acquiesced in this action by ordering the 10¢ rate dismissed; and, as contemplated by the statute, it directed a refund. Its only error was that it considered the Oklahoma minimum price to be the prior effectively filed rate. When the Court of Appeals reversed it on this point and held that the contract rate was the prior effective rate, it was entirely appropriate for the Court

to direct modification of the refund provision in the order so as to reflect the proper basis of computation within the meaning of the statutory scheme. The Commission could not have done other than this if the Court had not acted to direct the modification itself, for the reason that the 10¢ rate proceeding had been dismissed and terminated at Dorchester's own instance, and the refund requirements of the statute thereupon became operative.

The situation created by this dismissal of the 10¢ rate proceeding is very similar to the one that was present in *Mobile*. There, the seller's increased rate filing, permitted by the Commission to become effective over the buyer's protest but only under bond and subject to further hearing, subsequently became moot before a final determination was made as to its lawfulness. This Court expressly recognized the propriety and necessity of a refund to the buyer of the difference between this increased rate during the period of its effectiveness, and the prior legally effective rate for which it had been sought to be substituted.

Dorchester is, and has been, free to initiate at any time a proceeding in which it can seek to have set aside the legally effective rate of 6.253¢ per Mcf, and to substitute for it any increased rate which it may choose to file. That action must, however, operate prospectively in the circumstances of this case, and it cannot be initiated by a remand to the Commission for the purpose of considering the computation of the refund. Nothing can be done by the Commission in the present posture of the case except to direct the refund required by the statute upon the dismissal and termination of the 10¢ rate proceeding. The direction by the Court of Appeals of the appropriate modification of the Commission's order for this purpose was proper

under the circumstances and did not transgress upon the rate regulatory functions committed to the Commission.

Respectfully submitted,

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